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International Convention for the Protection of All Persons from Enforced Disappearance

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# Consideration of reports of States parties under article 29, paragraph 1, of the Convention

## Reports of States parties due in 2014

## Colombia*

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** The annexes may be consulted in the archives of the Committee secretariat.

# I. Introduction

1. The Government has been deeply involved in the efforts to combat enforced disappearance and has a sophisticated and increasingly powerful system to prevent the offence and punish its perpetrators. The ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, through Act No. 1418 of 2010, demonstrates the commitment to meeting international standards by adopting legislative and administrative measures, based on the relevant constitutional provisions, in order to take a comprehensive approach to the issue.

2. The Convention, together with the other international human rights instruments, have constitutional rank and, accordingly, take precedence in the domestic legal order, in keeping with articles 53, 93, 94, 102, paragraph 2, and 214, paragraph 2, of the Constitution. Pursuant to these provisions, the Constitutional Court has developed the concept of "constitutional corpus", whereby standards and principles which, without being formally expressed in the Constitution, are nonetheless understood to be a part of it.

3. This report describes the relevant developments in the country, made possible by the contribution of civil society and the guidance of international organizations. The methodology used to prepare this document meets the guidelines regarding the form and content of reports submitted by States parties under article 29 of the Convention (CED/C/2).

# II. Substantive provisions of the Convention

## Article 1: Legal and administrative measures prohibiting the subjection to enforced disappearance

4. Colombia has a comprehensive body of law prohibiting enforced disappearance, including first and foremost the Constitution, which specifically regulates this issue.

5. In its article 12, the Constitution explicitly prohibits subjecting anyone to enforced disappearance: "No one shall be subjected to enforced disappearance, torture or any other cruel, inhuman or degrading treatment."

6. The Constitution also provides for public emergencies that may be declared by the President, i.e. in the case of external war, internal unrest or a state of emergency, and establishes prohibitions on their use in order to safeguard human rights. For example, the Constitution limits the executive branch's extraordinary powers, particularly those set out in article 214, paragraphs 2 and 3, as follows:

> "2. Human rights and fundamental freedoms shall not be suspended. The rules of international humanitarian law shall be upheld in all circumstances.
>
> 3. The normal functioning of the branches of power and government bodies shall not be disrupted."

7. Statutory Act No. 137 of 1994 expands on the Constitution, regulates the Government's powers during public emergencies and establishes the legal safeguards and guarantees for the protection of human rights, in keeping with international treaties.

8. The Government has ratified the Inter-American Convention on Forced Disappearance of Persons,[1] which entered into force for Colombia in 2005. Article I (a) stipulates that:

> "The States Parties to this Convention undertake:
>
> a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees."

9. There are no provisions in the Colombian legal order authorizing the suspension of the guarantee against being subjected to enforced disappearance.

> "Even if legislation and practices that the State may have adopted in respect of terrorism, emergency situations, national security or any other circumstances have affected the effective implementation of this prohibition."

10. As mentioned previously, no legal provision authorizes enforced disappearance, even during public emergencies. In that regard, the Constitutional Court has issued a constitutionality ruling whereby:

> "In accordance with the constitutional order, during normal circumstances, individuals have full rights and the guarantees required to exercise them. During public emergencies, the Government may restrict some of these rights as far as is strictly necessary to counteract the effects of the public emergency and ensure a return to normal circumstances. However, some of these rights are considered inalienable and their restriction is prohibited regardless of whether a public emergency has been declared. Thus, it would be absolutely contrary to the Constitution to permit the perpetration of enforced disappearance during public emergencies.
>
> Article 214, paragraph 2, of the Constitution stipulates that during such emergencies 'human rights and fundamental freedoms shall not be suspended. The rules of international humanitarian law shall be upheld in all circumstances. A statutory law shall regulate the Government's powers during public emergencies and establish the legal safeguards and guarantees for the protection of human rights, in keeping with international treaties.' However, without the mechanisms required to exercise these rights, they remain mere abstractions. Accordingly, paragraph 3, provides that 'the normal functioning of the branches of Government and government bodies shall not be disrupted.'
>
> Article 4 of Act No. 137 of 1994 regulates the legal safeguards and guarantees for the protection of the fundamental freedoms set forth in article 214, paragraph 2, of the Constitution. Article 4 provides that the rights protected by the criminalization of enforced disappearance are inalienable and reiterates that the guarantees required to exercise these rights may be suspended.
>
> During public emergencies, not only is enforced disappearance prohibited, but the State is also required to guarantee every right associated with this offence. It is vital to preserve the means of ensuring that the judicial authorities and the relatives of persons deprived of their liberty are able to determine their whereabouts, their state of health and which authority was responsible for the detention."[2]

11. Act No. 589 of 2000 criminalizes the enforced disappearance of persons and provides for the establishment of the Disappeared Persons Investigative Commission with a

[1] Adopted through Act No. 707 of 2001.
[2] Constitutional Court, ruling No. C-580/02.

view to addressing and preventing enforced disappearance in the context of the internal armed conflict.

12. Title III of Act No. 599 of 2000 (Criminal Code), as amended by article 14 of Act No. 890 of 2004, provides for offences against individual freedoms and other guarantees, including enforced disappearance, kidnapping and arbitrary detention.

13. Article 165 of the Criminal Code provides as follows regarding enforced disappearance:

> "Article 165. Enforced disappearance. A person who in any manner deprives another person of their liberty, conceals them and refuses to acknowledge the deprivation of liberty or fails to provide information on their whereabouts, thereby placing them outside the protection of the law.
>
> ...
>
> The same penalty shall apply to a public servant, or a person acting under a public servant's orders or with his or her acquiescence, who commits the acts set forth in the previous paragraph."

14. The following legislative and administrative measures should also be noted:

- Statutory Act No. 971 of 2005, on the establishment of the urgent search mechanism as the guarantor of freedom, which operates alongside a criminal investigation;
- Act No. 1408 of 2010 (or Commemoration Act), which commemorates the victims of enforced disappearance and lays down measures to locate and identify them;
- Act No. 1448 of 2011 (or Victims and Land Restitution Act), which sets forth measures to provide comprehensive care, assistance and reparation for victims of the internal armed conflict and considers enforced disappearance as grounds for awarding victim status. Its regulating decree, No. 4800 of 2011, establishes the mechanisms for the effective implementation of the comprehensive care, assistance and reparation measures and the realization of their constitutional rights. Decree No. 4803 of 2011 provides for the establishment of the Centre for Historical Memory to fulfil the right to truth of the victims of the armed conflict;
- Act No. 531 of 23 May 2012, which outlines the procedure for declaring a person missing as a result of enforced disappearance or other forms of involuntary disappearance and covers the consequences thereof under civil law;
- Decree No. 929 of 2007, which regulates the Disappeared Persons Investigative Commission, stipulating that it is to be headed by the Ombudsman, and is being amended at the Ombudsman's initiative;
- Regulatory Decree No. 4218 of 2005, regulating the National Missing Persons Register, which is kept by the Forensic Medicine and Science Institute.

15. These legislative developments were the fruit of discussions, inter-institutional efforts and agreements reached with civil society, in which the institutions and organizations that make up the Disappeared Persons Investigative Commission have played an active role.

16. The part played by the Disappeared Persons Investigative Commission at the local and national levels may be summarized as follows:

(a) *Coordination*: The Commission, as the leading authority on enforced disappearance, is responsible for understanding the functioning and spheres of authority of the institutions in order to ensure inter-institutional coordination, thereby enabling it to

meet the interests and needs of all sectors and to design, spearhead and adopt measures to strengthen joint State efforts to prevent and eradicate enforced disappearance;

(b) *Monitoring*: The Commission has overseen the requisite and effective development of the capacities of the various State entities dealing with disappearances. Given the regional features of enforced disappearance, the Commission sets up, jointly with the relevant local authorities, mechanisms to prevent and limit such disappearances. It is responsible for assessing and analysing the design and implementation of regional search plans;

(c) *Guidance and consultation*: The Commission may suggest measures to spur on investigations and request or recommend the protection of victims and witnesses of enforced disappearance with a view to safeguarding their lives and personal safety. These efforts bring together the relatives of forcibly disappeared persons and the members of the Commission in order to increase trust in and the efficiency of efforts to combat enforced disappearance;

(d) *Training*: The Commission has been improving the training process for Government staff in the country's various regions. In the past four years, it has provided training to over 1,000 public servants nationwide, in particular in Popayán, Yopal, Medellín, Buenaventura, Apartadó, Barranquilla, Santa Marta and Cartagena.

## Article 2: Definition of enforced disappearance

17. As mentioned previously, article 165 of the Criminal Code classifies enforced disappearance as follows:

> "A **person** who **in any manner deprives** another person **of their liberty, conceals them and refuses to acknowledge the deprivation of liberty or fails to provide information on their whereabouts, thereby placing them outside the protection of the law**, shall be liable to imprisonment for 320 to 540 months, a fine of 1,333.33 to 4,500 statutory minimum monthly wages and the deprivation of his or her rights and public duties for 160 to 360 months.
>
> **The same penalty shall apply to a public servant, or anyone acting at the instigation or with the acquiescence of a public servant, who commits the acts described in the previous paragraph.**" (Emphasis added.)

18. This article includes all of the elements contained in article 2 of the Convention and provides greater guarantees insofar as the perpetrator may be either a public servant, an individual acting under his or her orders or with his or her consent or any other person, regardless of their status, affiliation or ties to any group or movement. In addition, under article 166, the fact that the perpetrator is a public servant is an aggravating circumstance of the offence.

19. The Constitutional Court, in its ruling No. C-260 of 2011 on the constitutionality of the Convention (adopted via Act No. 1418 of 2010), demonstrates in its reasoning how domestic law is in line with, and even surpasses, international standards.

20. The following paragraphs examine the three elements that, according to the Convention, should appear in the definition.

**1. The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State**

21. Initially, the definition of the crime of enforced disappearance contained a restrictive definition of the perpetrator that was limited solely to members of illegal armed groups. However, the Constitutional Court, in its ruling No. C-317 of 2 May 2002, found the sentence "*perteneciendo a un grupo armado al margen de la ley*" (belonging to an illegal armed group) unenforceable because it significantly reduced the meaning and scope of the general protection contained in article 12 of the Constitution[3] and, specifically, omitted persons who: (a) do not belong to any group, i.e. who commit the offence individually or *motu propio*; (b) belong to an unarmed group; or (c) belong to a legal armed group.

**2. The refusal to acknowledge the deprivation of liberty and the concealment of the fate or whereabouts of the disappeared person**

22. Concealment of a person and the refusal to acknowledge the deprivation of liberty and to provide information on the person's whereabouts are covered in the definition contained in the Criminal Code. In the aforementioned No. C-317 of 2002, the Constitutional Court stated that: "Given that, under article 33 of the Constitution, persons cannot be compelled to incriminate themselves, it is not necessary that the suspect divulge the missing information in order for the offence to be considered to have been committed; the withholding of that information and the refusal to acknowledge the deprivation of liberty are sufficient."

**3. Placement outside the protection of the law**

23. The third element is also found in the last part of the definition in the Criminal Code, i.e. "*sustrayéndola del amparo de la ley*" (removing [the person] from the protection of the law), thereby demonstrating that the definition contains all the elements required under the Convention.

## Article 3: Measures adopted to investigate and punish enforced disappearance

24. Regarding investigations and proceedings, the Attorney General's Office, which is the judicial body responsible for investigating offences, has established the National Forced Displacement and Disappearance Unit pursuant to Resolution No. 0-2596 of 3 November 2010.

25. The Forensic Medicine and Science Institute, attached to the Attorney General's Office, assists with the administration of justice through expert opinions on technical and scientific issues. At the request of the judicial authorities, it carries out pathological, clinical, psychiatric, psychological and forensic examinations and issues expert opinions to assist judicial investigations into cases of missing persons.

26. The Ministry of Defence has issued Directive No. 06 of 2006 on the adoption of measures to prevent enforced disappearance and to support investigations into such cases and efforts to find disappeared persons through the urgent search mechanism, in keeping with national and international law.

[3] Article 12: "No one shall be subjected to enforced disappearance, torture and other cruel, inhuman or degrading treatment or punishment."

27. Pursuant to the Directive, the operative, tactical and operational units of the police and security forces — depending on the resources available and the security situation in the area — respond as a matter of priority to any requests from the judicial authorities concerning the effective implementation of the urgent search mechanism or of investigations into cases of enforced disappearance, including technical and scientific procedures. They immediately take the necessary steps to ensure access to given locations so that the judicial authorities may conduct inquiries and collect evidence.

## Article 4: Characterization of enforced disappearance as a separate offence

28. Colombian criminal legislation, specifically article 165 of Act No. 599 of 2000, as amended by article 14 of Act No. 890 of 2004, characterizes enforced disappearance as a separate offence.

29. As mentioned previously, the content of the article in question includes each of the elements enshrined in article 2 of the Convention and provides even more guarantees insofar as it does not qualify the perpetrator of the offence. The offence is treated as a "crime against individual freedom" under Title III of Act No. 599 of 2000, which also covers a separate series of offences in order to safeguard this legal right, such as abduction; the seizure or diversion of ships, airplanes or public transport; arbitrary detention; torture; forced displacement; immigrant trafficking; trafficking in persons; and trafficking in children and adolescents.

30. The characterization of enforced disappearance as an offence separate from other offences which may have similar elements is demonstrated by the following:

### 1. Abduction

31. While abduction falls under the same title of the Criminal Code, namely "crimes against individual freedom and other guarantees", the offence may involve different acts which may, in turn, carry different penalties:

> "Article 168. Ordinary abduction: Anyone who, for purposes other than those referred to in the following article, seizes, removes, retains or conceals another person, shall incur a prison sentence of between one hundred and ninety-two (192) and three hundred and sixty (360) months and a fine of between eight hundred (800) and one thousand five hundred (1,500) times the statutory minimum monthly wage in force.
>
> Article 169. Abduction for purposes of extortion: Anyone who seizes, removes, retains or conceals a person for the purpose of demanding a benefit or any profit in exchange for their release, or in order to have any act done or omitted, or for publicity or political purposes, shall incur a prison sentence of between three hundred and twenty (320) and five hundred and four (504) months and a fine of between two thousand, six hundred and sixty six point six-six (2,666.66) and six thousand (6,000) times the statutory minimum monthly wage in force.
>
> These penalties shall also apply when the offence is committed temporarily on a means of transport for the purpose of obtaining an economic benefit by means of threat."

### 2. The abduction of children

32. The abduction of children is not an offence separate from abduction, rather it constitutes aggravating circumstances:

"Article 170. Aggravating circumstances: The penalty for abduction for purposes of extortion shall be between four hundred and forty-eight (448) and six hundred (600) months and the fine shall be between six thousand, six hundred and sixty-six point six six (6,666.66) and fifty thousand (50,000) times the statutory minimum monthly wage in force, not exceeding the maximum term of imprisonment provided for in the Criminal Code, in any of the following circumstances:

1. When the offence is committed against a person who is unable to take care of him or herself because of disability or who suffers from a serious illness; *or who is under eighteen (18)* or over sixty-five (65) years old; or who does not have the full capacity of self-determination or who is pregnant." (Italics not in the original)

### 3. Arbitrary detention

33. Arbitrary detention also falls under the same title as disappearance but, like abduction, is a different offence:

"Article 176. Special arbitrary detention. Any public official who, without having satisfied the relevant legal requirements, admits a person in order to deprive that person of their liberty or to keep them under security measures shall incur a prison sentence of between forty-eight (48) and ninety (90) months and shall be dismissed from their position and public office."

### 4. Deprivation of liberty

34. Title III also covers unlawful deprivation of liberty and its unlawful prolongation:

"Article 174. Unlawful deprivation of liberty. Any public official who, in abuse of his or her authority, deprives another person of their liberty, shall incur a prison sentence of between forty-eight (48) and ninety (90) months.

Article 175. Unlawful prolongation of deprivation of liberty. Any public official who unlawfully prolongs the deprivation of liberty of a person shall incur a prison sentence of between forty-eight (48) and ninety (90) months and shall be dismissed from their job and public office."

### 5. Torture

35. The crime of torture appears under two titles of the Criminal Code: firstly, Title II, which concerns crimes committed against persons who are protected by international humanitarian law and provides as follows:

"Article 137. Torture of protected persons. Anyone who, *in the context and conduct of an armed conflict*, inflicts severe physical or mental pain or suffering on a person with a view to obtaining from them or a third party information or a confession, punishing them for an act that they have committed or are suspected of having committed, or intimidating or coercing them for any reason based on discrimination of any kind shall incur a prison sentence of between one hundred and sixty (160) and three hundred and sixty (360) months, a fine of between six hundred and sixty six point six six (666.66) and one thousand five hundred (1,500) times the statutory minimum monthly wage in force, and disqualification from exercising rights and public office for between one hundred and sixty (160) and three hundred and sixty (360) months." (Italics not in the original)

36. Title III also covers torture and provides as follows:

"Article 178. Torture. Anyone who inflicts physical or mental pain or suffering on a person with a view to obtaining from them or a third party information or a

confession, punishing them for an act that they have committed or are suspected of having committed, or intimidating or coercing them for any reason based on discrimination of any kind shall incur a prison sentence of between one hundred and twenty-eight (128) and two hundred and seventy months (270), a fine of between one thousand, six hundred and sixty-six point six six (1,666.66) and three thousand (3,000) times the statutory minimum wage in force, and disqualification from exercising rights and public office for the same period as the prison sentence in question.

Any person who commits torture for purposes other than those described above shall incur the same penalties.

Pain or suffering arising only from, inherent in or incidental to lawful penalties shall not be deemed to constitute torture."

37. The difference between "ordinary" torture and torture committed against a protected person lies in the fact that the second type of torture is carried out "in the context and conduct of an armed conflict", which is considered to be more serious and thus carries harsher penalties.

### 6. Deprivation of life

38. Unlike most of the offences mentioned so far, murder falls under Title I of the Criminal Code, which covers crimes against life and personal safety, and provides as follows:

> "Article 103. Murder. Anyone who kills another person shall incur a prison sentence of between two hundred and eight (208) and four hundred and fifty (450) months."

## Article 5: Enforced disappearance as a crime against humanity

39. Article 93 of the Colombian Constitution establishes the normative framework of the "body of constitutional law" in providing that "international treaties and agreements ratified by Congress that recognize human rights and prohibit their restriction during states of emergency shall take precedence over domestic law. The rights and duties set out in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Colombia."

40. On the basis of this article, the Constitutional Court of Colombia has, in rulings C-225-95, C-578-95, C-358-97, C-191-98 and C-574-92 inter alia, repeatedly defined this body of law as "those rules and principles which, without appearing formally in the text of the Constitution, are used as parameters to determine the constitutionality of legislation insofar as they have been incorporated as constitutional rules by various means and on the authority of the Constitution itself".

41. Furthermore, upon ratifying the Rome Statute of the International Criminal Court, the State of Colombia issued an addendum to article 93 of the Constitution, which reads as follows:

> "Article 93. Those international treaties and agreements ratified by the Congress that recognize human rights and prohibit their restriction during states of emergency shall prevail over domestic law [...]
>
> [...] Addendum introduced by Legislative Act No. 02 of 2001, which reads as follows: the State of Colombia may recognize the jurisdiction of the International Criminal Court in the terms provided for in the Rome Statute adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the

Establishment of an International Criminal Court and, consequently, ratify this treaty in accordance with the procedure established in the Constitution. The distinct treatment of substantive matters by the Rome Statute regarding the guarantees contained in the Constitution shall be permitted only within the scope of the subject matter regulated therein."

42. The Rome Statute was adopted by Act No. 742 of 2002. Article 7, paragraph 1, subparagraph (i), of the Statute defines enforced disappearance as a crime against humanity.

43. Moreover, in view of the fact that Colombia has adopted and ratified article 4 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I); article 15, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949 (Fourth Geneva Convention); and Act No. 5 of 1960, in accordance with these instruments, the State prohibits *the commission of acts that clearly violate the very conscience of mankind, such as arbitrary killings, torture, cruel treatment, the taking of hostages, enforced disappearances, safeguard proceedings or the imposition of penalties ex post ipso.*

## Article 6: Criminal responsibility and the consequences of orders issued by a superior

44. The regulations governing criminal responsibility apply to all criminal offences, including that of enforced disappearance. According to Colombian domestic law (the Criminal Code), a person becomes criminally responsible when they act in any of the following ways:

"Article 28. Participation of persons in a punishable offence. Perpetrators and participants are equally responsible for the commission of a punishable offence."

45. Article 29 of the Criminal Code provides as follows:

"Article 29. Perpetrators. A perpetrator is any person who commits a punishable offence either on their own or by using another person as an instrument.

Joint perpetrators are persons who, by mutual agreement, share responsibility for committing the criminal offence, taking into account the significance of their contribution.

A perpetrator is also anyone who acts as an authorized or de facto person or body representing a legal person, a collective entity without legal status, or a natural person for whom they act as a voluntary representative, and who commits the criminal offence, even if the special criteria used to determine the penalties carried by the offence in question do not apply to the perpetrator but to the person or collective entity that they represent.

All types of perpetrator shall incur the penalties applicable to the crime in question."

46. Article 30 of the Criminal Code defines participants in the following manner:

"Article 30. Participants. The ringleader and accomplice are both participants.

Any person who orders another person to commit an unlawful act shall incur the penalties carried by the crime in question.

Any person who contributes to the commission of an unlawful act or who provides assistance following the commission of the act, by previous agreement or at the time

of the act, shall incur the penalties carried by the offence in question, reduced by a sixth to a half [...]"

47. As to the actual perpetrator of the criminal offence, it should be noted that, firstly, the last paragraph of article 165, which refers to enforced disappearance, provides that *the same penalty shall also apply to any public official or private individual who, acting under the orders or with the permission of the latter, commits the act described in the paragraph above*; and, secondly, that the first aggravating circumstance for enforced disappearance becomes applicable *when the act is committed by a person who exercises authority or jurisdiction.*

48. As to the responsibility of members of legal organizations, in principle, and until a few years ago, the Supreme Court had dealt with the cases in question by means of established legal categories such as complicity,[4] however, of late, there appears to be a growing tendency to apply the theory of indirect commission through state entities.[5]

49. Moreover, the grounds for the absence of criminal responsibility are as follows:

"Article 32. Absence of criminal responsibility. A person shall not be held criminally responsible when: [...]

3. They act in strict compliance with a legal obligation.

4. They act in accordance with a legitimate order issued by a competent authority with the relevant legal formalities.

Due obedience shall not be recognized in cases involving the crimes of genocide, enforced disappearance or torture.

5. They act in the legitimate exercise of a right, a lawful activity or public office.

...

Any person who exceeds the limits of the grounds for the absence of criminal responsibility set out in paragraphs 3, 4, 5, 6 and 7 above shall incur a penalty not less than one sixth of the minimum or more than half of the maximum penalty carried by the punishable offence in question.

8. They act under unavoidable coercion from a third party."

50. In addition, article 91 of the Constitution provides as follows:

"Article 91: In the event of a manifest violation of a constitutional precept to the detriment of any person, the fact that the agent received their orders from a superior does not exempt them from criminal responsibility.

Military personnel in active service shall be exempt from this provision. In cases involving military personnel, only the superior who issues the order shall be held criminally responsible."

51. The Constitutional Court has handed down a number of rulings based on this provision, including ruling No. C-225/96, which provides that "due military obedience may not be invoked to justify the commission of acts that constitute a clear violation of human

[4] See: Supreme Court of Justice. Criminal Cassation Chamber, ruling of 7 March 2007. Trial No. 23835 (Machuca Case); and Supreme Court of Justice. Criminal Cassation Chamber, ruling of 8 August 2007. Trial No. 25973 (Yamid Amat Case).

[5] Indirect commission through state entities is "a way of controlling the will (distinct from error or coercion) which facilitates the attribution of criminal responsibility in instances where a state entity is involved in the commission of a criminal offence, namely instances in which a state entity and not an individual per se is used as an instrument to commit the crime".

rights and, in particular, of the dignity, life and safety of persons, such as homicide outside combat, the imposition of penalties without an impartial trial, torture, mutilations and cruel or degrading treatment".

52. Ruling No. C-358/98 provides that "acts constituting crimes against humanity are manifestly contrary to human dignity and to individual rights; accordingly they bear no relation to the constitutional function of the security forces insofar as an order to commit an act of this nature should not be obeyed".

53. Moreover, ruling No. C-578/02 provides as follows:

> "Efforts to combat impunity in the commission of heinous crimes has led the countries that are signatories of the Rome Statute to codify the doctrine on the responsibility of a commander or superior. Article 28, paragraph (a), of the Rome Statute covers not only military commanders of the regular military forces but also the de facto commanders of illegal armed groups. Military commanders, or persons effectively acting as military commanders, insofar as they are responsible for certain acts committed by persons under their control, shall be criminally responsible for crimes committed by forces under their effective command and control as a result of their failure to exercise proper control over them. The military commander in question shall be held criminally responsible when he or she either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes and failed to take all necessary and reasonable measures to prevent or repress their commission or to submit the matter to the competent authorities for investigation.
>
> "As to the constitutionality of the exclusion of due obedience from domestic constitutional law, the Court has echoed the acceptance by the State of Colombia of the international consensus on the subject:
>
> In addition to the fact that absolute due obedience and the unconditional exemption of the military subordinate from criminal responsibility have been universally considered in practice, use, custom and jurisprudence as contrary to international humanitarian law, it has also been expressly prohibited in several treaties signed by Colombia and which take precedence over domestic legislation (article 94 of the Criminal Code)."

54. Furthermore, in its consideration of the constitutionality of the Convention, ruling No. C-620 of 2011 addresses this aspect in the following terms:

> "On the basis of this reasoning, but as a volitional element of the crime, the possibility of claiming 'due obedience' is inadmissible as a justification for committing a crime and, moreover, article 23, paragraph 2, guarantees that any person who refuses to carry out an order of this nature shall not be punished under any circumstances.
>
> Accordingly, the norm established by these provisions is consistent with the Constitution, in particular as regards due process in terms of the lawfulness of the definition of a punishable offence, which covers many criminal offences committed by act or wilful or negligent omission. Also in relation to article 91 of the Constitution, on the basis of the interpretation made pursuant to ruling No. C-578 of 1995, responsibility may not be assigned solely to the person who issued the order in cases where military orders infringe the inviolable fundamental rights that are an integral part of human dignity (article 4 of Act No. 137 of 1994) since such orders should not be carried out and, if they are carried out, they cannot be used to exempt the perpetrators from criminal responsibility."

55. The penalty incurred by a superior who commits or sets out to commit the crime of enforced disappearance, or who has failed to take all necessary measures to prevent or punish the crime or to submit the matter to the competent authorities is determined, as already indicated, in articles 28 and 30 of the Criminal Code. Moreover, in Colombia, a criminal offence may be committed by act or omission, in accordance with article 25 of the Criminal Code, which provides as follows:

> "Article 25. Criminal offences may be committed by act or omission.
>
> Anyone with the legal duty to prevent the commission of a criminal offence and who fails to act despite being in a position to do so, shall incur the penalty provided for in the relevant criminal legislation. For that purpose, in accordance with the Constitution and the law, the agent in question must be personally responsible for safeguarding the protected legal right, or they must have been entrusted with that task in their position of guarantor responsible for monitoring a specific source of risk.
>
> Persons are in a position of guarantor in the following situations:
>
> 1. When they voluntarily undertakes to protect another person or a source of risk within their area of competence.
>
> 2. When persons live in close community.
>
> 3. When several persons carry out a hazardous activity.
>
> 4. When an unlawful situation entailing an immediate risk to the legal right in question has previously arisen.
>
> Paragraph: subparagraphs 1, 2, 3 and 4 shall apply only to punishable criminal offences which violate the right to life and personal integrity, individual freedom and sexual freedom and education."

56. It should be noted that, in Colombia, all persons, including public servants, are required to abide by the Constitution. The Constitution itself provides as follows:

> "Article 4. The Constitution is the supreme law. In all cases of incompatibility between the Constitution and the law or any other legislation or regulation, the constitutional provisions shall apply.
>
> It is the duty of citizens and of aliens in Colombia to abide by the Constitution and the laws, and to respect and obey the authorities."

57. In accordance with article 8 of the Inter-American Convention on Forced Disappearance of Persons, "the defense of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them."

58. Furthermore, ruling No. C-578 of 1995 declares the enforceability of article 15 of Decree No. 0085 of 1989 "amending the regulations governing the disciplinary regime of the military forces" on the understanding that military orders that infringe the intangible fundamental rights that are an integral part of human dignity (article 4 of Act No. 137 of 1994) should not be carried out and, if they are carried out, they cannot be used to exempt the perpetrators from criminal responsibility.

59. Article 28 of the Rome Statute requires that crimes committed by subordinates be the "result" of their superior's "failure to exercise control properly" over them, which is to say that there needs to be a causal relationship between the failure to exercise proper control on the part of the superior and the commission of the crimes by the subordinates.

60. Lastly, responsibility incurred through acts of omission presupposes the obligation to act of a person who plays the specific role of a "guarantor" to act (position and duty of a guarantor).[6]

## Article 7: Proportionality of the penalty and disciplinary sanctions

61. Article 165 of the Criminal Code provides as follows:

> "Article 165. Enforced disappearance. Anyone belonging to an illegal armed group who in any manner deprives another person of their liberty, conceals them and refuses to acknowledge the deprivation of liberty or fails to provide information on their whereabouts, thereby placing them outside the protection of the law, shall be liable to a term of imprisonment of twenty (20) to thirty (30) years, a fine of one thousand (1,000) to three thousand (3,000) times the current minimum statutory monthly wage and disqualification from the exercise of rights and the holding of public office for ten (10) to twenty (20) years.
>
> The same penalty shall apply to any public servant, or anyone acting at the instigation or with the acquiescence of a public servant, who commits the act described in the preceding paragraph." (Emphasis added.)

62. Article 166, which establishes aggravating circumstances, states that:

> "... The penalty prescribed in the preceding article shall be a term of imprisonment of thirty (30) to forty (40) years, a fine of two thousand (2,000) to five thousand (5,000) times the current minimum statutory monthly wage and disqualification from the exercise of rights and the holding of public office for fifteen (15) to twenty (20) years if the offence involves any of the following circumstances."

63. The maximum penalty under the Colombian Criminal Code, or Act No. 599 of 2000, is subject to the following rules, as amended by articles 1 and 2 of Act No. 890 of 2004 as follows:

> "Article 1. Article 31, paragraph 2, of the Criminal Code shall read:
>
> > 'In the event of concurrent offences, the custodial sentence shall in no case exceed sixty (60) years.'
>
> Article 2. Article 37, paragraph 1, of the Criminal Code shall read:
>
> > '1. The custodial sentence for criminal offences shall not exceed fifty (50) years, except in the event of concurrent offences.'"

[6] Ruling No. 1184 of 2008: "a person assumes the position of a guarantor when they find themselves in a situation by virtue of which they have a legal obligation to act to prevent an outcome arising from an act characterized as a criminal offence that is avoidable. The position of guarantor may not be occupied by persons who are under this obligation but who fail to perform their duty, thereby occasioning an adverse event which they could have prevented. In a strict sense, a person who is expressly obliged by the Constitution and/or law to act and refuses to do so, thereby giving rise to an outcome that could have been avoided, is considered to have violated the position of guarantor. In a broad sense, it is the general situation in which a person who has an obligation to conduct themselves in a certain manner in accordance with the role that they play in society finds themselves. From that point of view, it matters little whether the guarantor commits a crime through acts of commission or omission, as the fact remains that a person who conducts themselves in a way that runs counter to what is expected of them violates the position of guarantor because they fall short of expectations."

64. Similarly, articles 54, 55 and 58 of the Criminal Code govern generic circumstances justifying higher or lower penalties. Article 166 of the Code establishes specific aggravating circumstances for enforced disappearance, including:

> "1. When the offence is committed by a person exercising authority or jurisdiction.
>
> 2. When the offence is committed against a person who is unable to take care of him or herself because of disability.
>
> 3. When the offence is committed against a person who is under eighteen (18) years of age, over sixty (60) or pregnant.
>
> 4. When the offence is committed against the following persons on account of their status: public servants, communicators, human rights defenders, candidates or applicants for elected office, trade union leaders, politicians or religious leaders, persons who have witnessed acts liable to punishment or discipline, magistrates or any other person on account of their beliefs or political opinions or for any motive implying a form of discrimination or intolerance.
>
> 5. When the offence is committed against relatives of the persons mentioned in the preceding subparagraph on account of their status, up to the second degree of consanguinity or affinity or first degree of civil relationship.
>
> 6. When State property is used in perpetrating the offence.
>
> 7. If the victim is subjected to cruel, inhuman or degrading treatment during his or her disappearance, provided that such conduct does not constitute a separate offence.
>
> 8. When the victim dies or suffers physical or mental harm because of or during the enforced disappearance.
>
> 9. When any act is committed on the victim's body to prevent its subsequent identification or to harm a third party."

65. Article 167 establishes mitigating circumstances. The penalties prescribed in article 160 shall be reduced in the following cases:

> "1. The penalty shall be reduced by between half (1/2) and five sixths (5/6) when, within a period not exceeding fifteen (15) days, the perpetrators or participants release the victim voluntarily and in a similar physical and mental state to when they were deprived of their liberty, or supply information leading to the victim's immediate recovery in a similar physical and mental state.
>
> 2. The penalty shall be reduced by between one third (1/3) and half (1/2) when, in a period exceeding fifteen (15) days but no longer than thirty (30), the perpetrators or participants release the victim under the conditions set out in the preceding subparagraph.
>
> 3. If the perpetrators or participants supply information leading to the recovery of the disappeared person's body, the penalty shall be reduced by up to one eighth (1/8).
>
> Paragraph. The penalty reductions provided for in this article shall apply only to perpetrators or participants who release the victim voluntarily or supply information."

## Article 8: Statute of limitations for the offence

66. The statute of limitations for criminal proceedings relating to the crime of enforced disappearance is governed by articles 83 to 86 of the Criminal Code, which, because enforced disappearance is a continuing offence, establish a limit of thirty (30) years from the date of the disappeared person's reappearance, either dead or alive.

> "Article 83. Statute of limitations for criminal proceedings. Supplemented by Act No. 1154 of 2007 and amended by article 1 of Act No. 1309 of 2009. The right of action shall lapse after a period equal to the maximum sentence established by law, should that be custodial, but in no case less than five (5) or more than twenty (20) years, with such exceptions as are contained in the following subparagraph of this article.
>
> As amended by article 1 of Act No. 1309 of 2009, article 1 of Act No. 1426 of 2010 and article 16 of Act No. 1719 of 2014: The statute of limitations for the offences of genocide, *enforced disappearance*, torture and forced displacement *shall be thirty (30) years.*
>
> For offences carrying a non-custodial sentence, the right of action shall lapse after five (5) years.
>
> Substantial grounds affecting the punishment shall be taken into account in this regard.
>
> As amended by article 14 of Act No. 1474 of 2011: for a public servant who, in exercise of their official functions or duties or during that exercise, commits or is involved in an offence, the statute of limitations *shall be extended by one third.*
>
> The statute of limitations shall also be extended by half when the offence originates or is committed abroad.
>
> In any case, when the statute of limitations is extended, the established maximum limit shall not be exceeded. (Emphasis added.)
>
> Article 84. Application of the statute of limitations. For instantaneous offences, the statute of limitations shall apply from the day on which the act is committed.
>
> *For continuing and attempted offences, the statute of limitations shall begin to run when the last act is committed.*
>
> In cases of omission, the statute of limitations shall begin to run when the duty to act ends.
>
> When several offences are investigated and tried in a single proceeding, the statute of limitations shall run independently for each one.
>
> Article 85. Waiving the statute of limitations. The defendant may waive the statute of limitations for criminal proceedings. In any case, if a final decision has not been handed down two (2) years after the statute has lapsed, proceedings shall be time-barred.
>
> Article 86. Interrupting and suspending the statute of limitations for criminal proceedings. the statute of limitations for criminal proceedings shall be interrupted when an indictment or other formal charge is issued.
>
> As amended by article 6 of Act No. 890 of 2004: once the statute of limitations has been interrupted, it shall resume for a period equal to half of that applicable under article 83. In such cases, the period shall be no less than five (5) or more than ten (10) years."

67. The overall regulations that apply to the statute of limitations for criminal penalties are contained in articles 89 and 90 of the Criminal Code, which provide as follows:

> "Article 89. Statute of limitations for criminal penalties. Amended by article 99 of Act No. 1709 of 2014. The statute of limitations for custodial sentences, with such exceptions as are provided for in the international treaties duly incorporated into the legal system, shall expire after the period established in the sentence, or whatever period remains to be served, but in no case shall that period be less than five (5) years.
>
> The statute of limitations for non-custodial sentences shall expire after five (5) years.
>
> Article 90. Interruption of the statute of limitations for custodial sentences. The statute of limitations for custodial sentences shall be interrupted when the convicted person is arrested pursuant to a sentence or brought before the competent authority to serve a sentence."

68. Under existing legislation on the statute of limitations for sentences, there is no express provision defining crimes against humanity as offences or establishing the non-applicability of statutory limitations to such acts. Nevertheless, Congress is currently considering Bill No. 018 of 2012 "to amend Act No. 599 of 2000 and do away with the statute of limitations for the offences of genocide, crimes against humanity and other inhumane acts", which seeks to amend article 83 of the Criminal Code as follows:

> "Article 1. Article 83 of Act No. 599 of 2000 is amended as follows:
>
> Article 83. Statute of limitations for criminal proceedings. The right of action shall lapse after a period equal to the maximum sentence established by law, should that be custodial, but in no case less than five (5) or more than twenty (20) years, with such exceptions as are contained in the following subparagraph of this article.
>
> No statute of limitations shall apply to the offences of genocide, crimes against humanity or other inhuman acts of a similar character intentionally causing great suffering or serious injury to the body or mental or physical health of protected persons, as described in articles 6, 7 and 8 of the Rome Statute of the International Criminal Court, adopted through Act No. 742 of 2002. (...)"

69. It follows from the wording of the article that no statute of limitations applies to enforced disappearance, as this is one of the offences constituting crimes against humanity (article 7 of the Rome Statute).

70. Act No. 589 of 2000, which was the first to define enforced disappearance as an offence in Colombia, stipulates:

> "Article 11. State obligations. Without prejudice to the discontinuance or termination of criminal proceedings for any reason, in cases involving the crime of enforced disappearance, *the State is under a continuing obligation to take all necessary steps to establish the victim's whereabouts, determine the reasons for their disappearance and inform their relatives of its findings*." (Emphasis added.)

71. Regarding administrative litigation and for the purpose of providing judicial redress to victims or their relatives, the time limits for filing lawsuits are regulated as follows:

> "Article 7. Article 136, paragraph 8, of the Code of Administrative Procedure shall contain a second subparagraph that reads:
>
> Nevertheless, the time limit for the remedy of direct reparation for the offence of enforced disappearance is calculated from the date on which the victim appears or, failing that, from the effective date of the final judgement adopted in criminal

proceedings, without prejudice to the possibility of taking action at the time the events in question occur."

## Article 9: Investigation and punishment of acts of enforced disappearance in territory under the State's jurisdiction

72. The measures taken to establish jurisdiction in Colombia are of a legal nature. The scope of application of domestic criminal law is governed by articles 14 to 16 of the Criminal Code, on territoriality, which stipulate that criminal law shall apply to any person who infringes the law in Colombian territory. An offence shall be deemed to have been committed: (1) At the place where all or part of the act occurred; (2) At the place where the act which should have occurred did not occur; and (3) At the place where the result occurred or should have occurred.[7]

73. When the alleged offender is a Colombian national, the provisions of article 15 of the Criminal Code, on extended territoriality, must be observed. The Code establishes that Colombian criminal law shall apply to a person who commits an offence on board a Colombian aircraft or vessel that is outside Colombian territory, with such exceptions as are enshrined in the international treaties and conventions ratified by Colombia.

74. It shall also apply to anyone who commits an offence on board any other Colombian aircraft or vessel on the high seas, if criminal proceedings have not been instituted abroad.[8]

75. Regarding extraterritoriality, article 16 of the Criminal Code provides that Colombian criminal law shall apply:

> "1. To any person who commits an offence abroad against the existence and security of the State, the constitutional order, the social and economic order (with the exception of the conduct defined in article 323 of this Code) or the public administration, or who falsifies Colombian currency, a public credit document or official stamp, even if that person has been acquitted abroad or sentenced abroad to a lesser penalty than provided by Colombian law.
>
> In all cases, any time for which that person has been in custody shall be deducted from the length of the sentence.
>
> 2. To any person in the service of the Colombian State who enjoys immunity under international law and who commits an offence abroad.
>
> 3. To any person in the service of the Colombian State who does not enjoy immunity under international law and who commits an offence abroad other than one of the offences mentioned in paragraph 1, and who has not been tried abroad.
>
> 4. To any Colombian citizen who, except in the circumstances provided in the preceding paragraphs, is in Colombia after having committed an offence on foreign territory which under Colombian criminal law is punishable with a custodial penalty of not less than two (2) years, and who has not been tried abroad.
>
> If the penalty is a lesser one, proceedings shall not be taken unless a complaint is lodged or a petition filed by the Attorney-General of the Nation.
>
> 5. To a foreign national who, except in the circumstances determined in paragraphs 1, 2 and 3, is in Colombia after having committed an offence abroad prejudicial to the State or to a Colombian citizen and which is punishable under

[7] Colombian Criminal Code, art. 14.
[8] Ibid., art. 15.

Colombian law with a custodial penalty of not less than two (2) years, and who has not been tried abroad.

In this event, proceedings shall not be taken unless a complaint is lodged or a petition filed by the Attorney-General of the Nation.

6. To a foreign national who has committed an offence abroad prejudicial to another foreigner, if and only if:

(a) He is on Colombian territory;

(b) The offence is one which in Colombia is punishable with a custodial penalty of not less than three (3) years;

(c) The offence is not a political offence; and

(d) An application has been made for extradition, and extradition has not been granted by the Colombian Government. Should extradition be refused, criminal proceedings may be brought.

In the event referred to in this paragraph, proceedings shall not be brought unless a complaint is lodged or a petition filed by the Attorney-General of the Nation, and only if the offender has not been tried abroad."

76. The provisions governing legal assistance in Colombia are contained in the following laws: (a) for cases brought under Act No. 600 of 2000 (semi-inquisitorial criminal justice system), assistance is enshrined in articles 499 to 507; (b) for investigations conducted under Act No. 906 of 2004[9] (quasi-adversarial criminal justice system), it is provided for in articles 484 to 489.

77. In order to prevent enforced disappearance, Colombia has ratified various international instruments, including: the Inter-American Convention on Forced Disappearance of Persons, ratified by Act No. 707 of 2001, which entered into force in Colombia on 12 May 2005; the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Act No. 1418 of 2010, which entered into force in Colombia on 10 August 2012; and the Rome Statute of the International Criminal Court, ratified by Act No. 742 of 2002, which entered into force in Colombia on 1 November 2002.

78. It should be noted that, according to official records, Colombia has not received any extradition requests in connection with enforced disappearance.

## Article 10: The duty to notify other States and provide citizens with legal assistance

79. In Colombia, the provisions governing legal and consular assistance are contained in Act No. 600 of 2000 and Act No. 906 of 2004. For cases governed by articles 499 to 507 of Act No. 600 of 2000, there are certain guidelines that must be borne in mind in the context of relations with foreign authorities regarding legal assistance, whether requested by national or foreign authorities. Such requests can be handled directly by the Attorney General's Office or through foreign embassies and consulates.

80. For investigations conducted under articles 484 to 489 of Act No. 906 of 2004, there are general rules on legal assistance that the investigative and judicial authorities must bear in mind, particularly regarding cooperation with the International Criminal Court and the International Criminal Police Organization-Interpol, the handling of requests for legal

[9] Implementation is covered in article 530 of the Act.

assistance made to foreign authorities and the powers that authorities have to avoid delays in cooperation procedures.

## Article 11: Jurisdiction and competence to investigate and punish the crime of enforced disappearance

81. In Colombia, there is no express provision governing the exercise of universal jurisdiction. As to the authorities competent to investigate and prosecute cases of enforced disappearance in Colombia, for investigations conducted under Act No. 600 of 2000, the Attorney General's Office is tasked with directing, conducting and coordinating criminal investigations[10] and criminal circuit courts are responsible for trying cases.[11]

82. The quasi-adversarial criminal justice system can be broadly understood to involve a "party-driven trial", in which the roles of defence lawyer, prosecutor and judge are distinct, as opposed to the mixed system, in which the functions of investigation and prosecution may be performed by the same person. It comprises four stages: (i) Criminal complaint, (ii) Inquiry, (iii) Investigation and (iv) Judgement.

83. The Attorney General's Office is responsible for conducting investigations under Act No. 906 of 2004, as established in article 66, which stipulates that: "The State, through the agency of the Attorney General's Office, has a duty to initiate criminal proceedings and conduct investigations into acts that may constitute offences, either of its own motion or pursuant to a complaint, special request, lawsuit or any other action, with such exceptions as are contained in the Constitution and in this Code."

84. The competence of prosecutors depends on the court in which they serve. They are competent to investigate offences under their jurisdiction. Thus, in the specific case of enforced disappearance, the competent prosecutors are those who serve in specialized criminal circuit courts, whose competence is defined in article 35, paragraph 6, of Act No. 906 of 2004 as follows:

> "Article 35. Specialized criminal circuit courts. Specialized criminal circuit courts try: ... **6. Enforced disappearance.** ..." (Emphasis added.)

## Article 12: Mechanisms for resolving cases of enforced disappearance and guarantees regarding access to justice

85. The procedure and mechanisms through which the authorities resolve and establish the facts in cases of enforced disappearances are governed either by Act No. 600 of 2000

[10] "Article 74. Powers of investigation. It is the responsibility of the Attorney General's Office to direct, conduct and coordinate criminal investigations. The Office shall act through the Attorney General, prosecutors assigned by the Attorney General to special cases, designated prosecutors attached to the Supreme Court, higher district courts, criminal circuit courts, municipal criminal courts and municipal courts exercising mixed jurisdiction. The Chamber of Representatives and the Supreme Court have the power to investigate cases under the Constitution."

[11] "Article 77. Criminal circuit courts. Circuit courts try:

1. At first instance:

(a) Criminal cases against mayors, when the offence was committed in the exercise or because of their functions, and

(b) Offences not under the jurisdiction of another authority ..."

(in which case the divisional prosecutors [12] and the criminal circuit courts [13] are the competent investigating authorities), or by Act No. 906 of 2004 [14] (if the events in question took place or the corresponding investigation was launched following the entry into force of Act No. 906 of 2004, [15] the specialized prosecutors [16] being competent to carry out the corresponding investigation and the specialized circuit criminal courts [17] being competent to hear the case). In both cases, through a representative with power of attorney, the victim may join in the corresponding procedure and have his or her rights enforced.

86. The Disappeared Persons Investigative Commission is an administrative mechanism set up under Act No. 589 of 2000 to resolve cases of enforced disappearance. The Commission is responsible for supporting and promoting investigations into cases of enforced disappearance and for devising, assessing and supporting the implementation of plans to find disappeared persons.

87. In Colombia, the crime of enforced disappearance is investigated on an informal basis; [18] consequently, as the body responsible for the corresponding criminal prosecution, once it has been notified of an alleged disappearance, the Attorney General's Office opens the corresponding inquiry. As enforced disappearance constitutes a crime, there is no need for a formal complaint to be made before an investigation can be launched. Indeed, public servants have a duty either to launch an investigation (if they are competent in that regard), or to immediately notify the competent authority of the case in question.

88. The National Plan to Find Disappeared Persons is another mechanism for resolving cases of enforced disappearance in Colombia. Under the Plan, the following activities are carried out on an ongoing basis:

### 1. Information gathering

89. As the body that manages the National Missing Persons Register [19] (an inter-institutional and national system set up on 1 January 2007, into which details of corpses submitted for legal autopsy and reports of missing persons are entered), the Forensic Medicine and Science Institute is responsible for gathering information. In its role as the administrator of the Register, the Institute has set up the following six platforms, with the aim of achieving the objectives and aims [20] set out in Decree No. 4218 of 2005:

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[12] Also known as prosecutors assigned to the criminal circuit courts. See article 120 of Act No. 600 of 2000 in this regard.

[13] Article 77 of Act No. 600 of 2000, in accordance with articles 75, 76 and 78 and transitional article 5 of said act.

[14] Implementation in that regard being enshrined in article 530 of said act.

[15] Taking into account the fact that the commission of the offence of enforced disappearance is ongoing.

[16] Also known as prosecutors assigned to the specialized circuit criminal courts.

[17] Act No. 906 of 2004, article 35 (6).

[18] Article 250 of the Political Constitution of Colombia of 1991, amended by article 2 of Legislative Act No. 03 of 2002. Articles 26 and 27 of Act No. 600 of 2000 in accordance with articles 31, 35 and 36 of said Statute. Articles 66 and 67 of Act No. 906 of 2004 in accordance with articles 70, 74 and 75 of said Code.

[19] Decree No. 4218 of 2005. Article 2. Definition: The National Missing Persons Register is an information reference system containing data provided by the relevant bodies, in accordance with their functions. The Register is a reliable, timely and useful information tool that facilitates the identification of corpses that have undergone autopsy in Colombia, provides guidance regarding the search for persons reported as victims of enforced disappearance, the follow-up to cases and the use of the urgent search mechanism.

[20] Decree No. 4218 of 2005. Article 3. Purpose: to provide the public authorities with a technical instrument that will provide support in terms of the design of policies on the prevention and suppression of enforced disappearances; to provide the judicial and administrative authorities and

- *Consultas públicas* (Public searches) - The web page www.medicinalegal.gov.co contains a section in which members of the public can search, either alphabetically, or by identity document number, for deceased persons who have been reported missing. In addition, overall nationwide figures can be obtained on missing persons and corpses that have undergone an autopsy;
- *LIFE – Localización de Información Forense Estadístico* (The Statistical Forensic Information Location system) – this is a geo-reference system that contains figures disaggregated by department and by municipality, on persons reported missing, unidentified corpses, causes of death, persons subjected to forensic examination and the bodies of identified deceased persons awaiting retrieval at cemeteries across the country. This system can be accessed by members of the public at www.medicinalegal.gov.co;
- *HOPE – Hagamos Obligatorio Poder Encontrarlos* (Let's Make Sure They Can be Found) – this is an electronic mural of photographs of faces of missing persons (posted with the prior consent of their families) that can be viewed by users. The aim of the mural is to publicize cases, facilitate the recognition of missing persons and raise the profile of the phenomenon of enforced disappearance in Colombia. The mural can be accessed by members of the public at www.medicinalegal.gov.co;
- *SIRDEC – Sistema de Información Red de Desaparecidos y Cadáveres* (Missing Persons and Corpses Information Network System) – this is the main platform of the National Missing Persons Register. Through this system, users can consult, enter and amend information and cross reference [21] information on corpses having undergone autopsy and reports of missing persons;
- *SICOMAIN – Sistema de Información Consulta Masiva Internet* (Online Mass Information Consultation System) – this system is a databank bringing together all official databases established by the various competent bodies prior to 2007. The databank contains registries of corpses having undergone autopsy, persons reported missing and persons subjected to forensic examination;
- *SINEI – Sistema de Información Nacional de Estadística Indirecta* (National System for Indirect Statistical Information) – this is a system into which fully licensed doctors or doctors completing compulsory social service practising at locations where there is no office of the Forensic Medicine and Science Institute enter information on the forensic work they have performed.

90. The table below contains up-to-date figures provided by the National Missing Persons Register:

oversight bodies with an effective, sustainable and easily accessible technical information tool that enables them to exchange, compare and identify data that assist in locating missing persons; and to provide the public and organizations of victims of enforced disappearance with any information which may be useful in encouraging the competent authorities to design policies on the prevention and monitoring of conduct linked to enforced disappearances as referred to by Act No. 589 of 2000 and to locate the victims of such conduct.

[21] Decree No. 4218 of 2005. Article 6. Definitions. Cross referencing: process of analysis and series of tasks aimed at linking those data contained in the National Register of Missing Persons and those available from other information sources, in order to provide guidance or references regarding the identification of a corpse, the search for a missing person or the investigation of a case.

Table 1
**Figures from the National Missing Persons Register**
Number of missing persons – 1900–2014

| *Type of case* | *Case status* | *No. of cases* | *Total* |
|---|---|---|---|
| Presumed victim of enforced disappearance | Found dead | 878 | 21 004 |
| | Found alive | 436 | |
| | Still missing | 19 690 | |
| No information | Found dead | 2 853 | 71 868 |
| | Found alive | 20 352 | |
| | Still missing | 48 663 | |
| **Overall total** | | | **92 872** |

*Source:* National Register of Missing Persons/Missing Persons and Corpses Information Network System, 16 June 2014, 3.15 p.m.

91. As the body responsible for managing the National Missing Persons Register, the Forensic Medicine and Science Institute has created some 5,700 passwords and has held 12 annual training events for public servants and members of the families of missing persons.

92. Similarly, the Technical Panel for Case Resolution of the National Register of Missing Persons was set up and began operations on 30 January 2014. The Panel has entered 3,997 reports of missing persons and has defined the methodology to be used by the Technical Investigation Unit and the Criminal Investigation Department to upload files corresponding to unidentified corpses linked to cases analysed by those two entities.

### 2. Search and analysis

93. During this phase, the Forensic Medicine and Science Institute carries out information checks and cross referencing. A total of 6,018 cross reference checks have been carried out.

### 3. Recovery and analysis

94. During the third phase, the Forensic Medicine and Science Institute carries out ongoing analyses in laboratories specialized in the identification of corpses, in line with the relevant national and international regulations. The Institute is also competent to carry out medical and psychological assessments of victims found alive, at the request of the judicial authorities. The Institute has carried out 29,183 autopsies, leading to identification in all but 532 cases (1.8 per cent of the total figure). As to the analysis of complex cases or cases involving corpses in a state of skeletonization that have been exhumed from unmarked graves or cemeteries in Colombia by the national units of the Attorney General's Office, there have been 276 cases in which corpses have been identified and returned.

### 4. Final resting place of corpses

95. In the final phase of the National Plan to Find Disappeared Persons, corpses or human remains must be returned to their families, in accordance with their cultural beliefs. Burials of unidentified corpses or human remains must be carefully managed and all the necessary steps taken to ensure that they can be located for the purposes of return should they be identified at a later date. In that regard, in its role as a member of the Disappeared Persons Investigative Commission, the Forensic Medicine and Science Institute took part in work to prepare the Inter-institutional Protocol for the Dignified Return of Missing Persons.

As to the burial of corpses that have undergone an autopsy, under the procedure for the return of corpses for burial by the State, steps are taken to help properly preserve and mark burial sites or graves in cemeteries.[22] The Institute takes part in the process of returning corpses, through technical meetings on compliance with the Inter-institutional Protocol for the Dignified Return of Missing Persons.

96. Likewise, Act No. 971 of 2005 provides for other mechanisms that complement the criminal investigation of cases of enforced disappearance, such as the urgent search mechanism, the aim of which is to immediately carry out all the necessary steps for the location of missing persons by the judicial authorities. The urgent search mechanism provides an effective means of preventing enforced disappearances. Any person with knowledge of a presumed enforced disappearance can activate the mechanism through a request to any judicial authority. Moreover, officials of the Public Legal Service and other public servants may request that the urgent search mechanism be activated without the need for prior or preliminary procedures or investigations.

97. Any person who has knowledge of an enforced disappearance can pass on the information to the Attorney General's Office, either directly or through the judicial police,[23] or to any other authority, which shall immediately transmit the information to the body competent to launch the corresponding criminal investigation, in accordance with article 67 of the Criminal Code, which states that:

> "... any person with knowledge of an offence must transmit that information to the authorities, who must, in turn, carry out an investigation of their own motion.
>
> Public officials with knowledge of an offence which they must investigate of their own motion shall, without delay, launch the corresponding investigation if they are competent in the matter. Should they not be competent, they shall immediately transmit the information in question to the competent authority."

98. All authorities, including the judicial authorities, and particularly the Attorney General's Office, must enforce the rights set out above and consequently accept reports of missing persons; as indicated in the section of this report concerning article 11 of the present report, article 66 of Act No. 906 of 2004 provides as follows:

> "Responsibilities and duties. The State, through the Office of the Attorney General has a duty to initiate criminal proceedings and to conduct investigations into acts that may constitute offences, either of its own motion or pursuant to a complaint, special request, lawsuit or any other action, with such exceptions as are contained in the Constitution and in this Code ...."

99. Should the competent authorities refuse to investigate a case, the complainant may contact the Public Legal Service (municipal ombudsman's offices, the Counsel-General's Office and the Ombudsman's Office[24]), which may where competent, initiate the relevant actions against the public servants concerned. In the case of judicial authorities (prosecutors and judges), complainants may contact the section councils of the judiciary, which will launch the corresponding disciplinary investigation. Criminal complaints may also be brought against any public officials failing to carry out their duty in this regard.

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[22] Decree No. 4218 of 2005. Article 14. Registration of burials. Public and private institutions carrying out burials of corpses that have undergone an autopsy must provide the National Register of Missing Persons with information on the final resting place of corpses or human remains that will enable their recovery should such a step be necessary as a part of the corresponding judicial investigation. Similarly, officials responsible for cemeteries shall guarantee that tombs are preserved and marked with the data required by the National Register of Missing Persons.

[23] The Technical Investigation Unit and the National Police.

[24] Constitution of Colombia of 1991, arts. 118 and 281.

100. Information on cases can also be sent to the Disappeared Persons Investigative Commission, a body which supports and promotes investigations into cases of enforced disappearance and which also petitions the competent authorities to launch investigations.

101. A decision to refuse to launch an investigation may result from the dismissal or estoppel. Cases may be dismissed by the Attorney General's Office prior to charges being brought; under such circumstances, victims may submit a written request to the Office for the case to be reopened. If the Attorney General's Office does not reopen the case, a preliminary hearing may be requested before a due process judge, who will issue the final decision on the matter (arts. 79, 154–153 and 176 of the Code of Criminal Procedure, Act No. 906 of 2004).

102. In the case of estoppel, the Attorney General's Office issues a writ of preclusion and a preliminary hearing is held before the due process judge, who is, again, responsible for taking the final decision. However, the final decision may be subject to review or appeal (arts. 176–178 and 331–335, Act No. 906 of 2004).

103. As to protection for complainants and their representatives, witnesses and other persons taking part in the investigation, the examination and the trial, article 250 (7) of the Constitution states the following:

> "In the exercise of its functions, the Attorney General's Office shall
>
> ...
>
> 7. Ensure that victims, jurors, witnesses and other participants in criminal proceedings are protected. Both the conditions under which victims may intervene in criminal proceedings and the mechanisms of restorative justice shall be prescribed by law."

104. Further to this constitutional provision, article 11 of Act No. 906 of 2004 provides that:

> "Article 11. The rights of victims. The State shall ensure that victims have access to the administration of justice, under the terms set forth in this code.
>
> In furtherance of the above, victims shall have the right:
>
> ...
>
> (b) To protection of their privacy, personal security and the security of their families and of witnesses for the prosecution;
>
> ...
>
> (g) To be informed of the final decision in the criminal prosecution; to apply, where relevant, to the due process judge and to lodge appeals with the trial judge, where appropriate;"

105. In addition to the above, the Attorney General's Office has set up a protection and assistance programme for witnesses, victims and participants in the criminal process. The programme is governed by Resolution 0-5101 of 15 August 2008 of the Attorney General and run by the National Directorate for Protection and Assistance, in accordance with Decree No. 016 of 2014. A Victim and Witness Protection Programme has also been set up under the Justice and Peace Act.[25]

106. Likewise, a national protection unit has also been set up. This unit is a national public body within the Ministry of the Interior and runs a prevention and protection

[25] Currently regulated by Decree No. 1737 of 2010, repealing Decree No. 3570 of 2007.

programme focusing on the rights to life, freedom and the physical integrity and security of persons, groups and communities in situations of extraordinary or extreme risk as a direct consequence of their political, public, social or humanitarian activities or functions, or owing to their professional duties. This programme is run in coordination with the National Police and is governed by Decree No. 4912 of 2011.

107. Four of the 19 groups which benefit from the programme, in accordance with article 6 of Decree No. 4912 of 2011, are listed below; they may include friends and relatives or defenders of missing persons:

- Leaders, representatives and active members of organizations founded to protect human rights, victims' rights, social, civic and communal rights and rural dwellers' rights;
- Witnesses in cases involving human rights violations and breaches of international humanitarian law;
- Victims of human rights violations and breaches of international humanitarian law, including heads, leaders and representatives of organizations of displaced populations or of groups claiming land in situations of extraordinary or extreme risk;
- Representatives with power of attorney or forensic experts taking part in judicial or disciplinary proceedings relating to human rights violations or breaches of international humanitarian law.

108. The National Protection Unit and the National Police are responsible for the protection of the above persons. Where protection is the responsibility of the National Police, it assigns bodyguards and the National Protection Unit provides the vehicles and bodyguards when these are required to afford protection.

109. The Committee on Risk Assessment and the Recommendation of Measures carries out comprehensive risk assessment and formulates recommendations on protection measures and complementary measures tailored to each specific case.

110. The table below shows the number of cases of missing persons by source:

Table 2
**Number of investigations into cases of missing persons**

| *Oral Accusatory system of Criminal Justice – (Act No. 906 of 2004)* | | | *Judicial Information System of the Attorney General's Office (Act No. 600 of 2000)* |
|---|---|---|---|
| No. of cases | | 4 838 | 57 |
| Status | Ongoing | 4 838 | - |
| | Dormant | 0 | - |
| Stage | Inquiry | 4 814 | - |
| | Investigation | 4 | - |
| | Trial | 8 | - |
| | Complaint | 11 | - |
| | Proceedings curtailed | 1 | - |
| Location | Bogotá | 293 | 6 |
| | Bucaramanga | 93 | 4 |
| | Cali | 70 | 0 |
| | Cartagena | 41 | 4 |
| | Cúcuta | 95 | 4 |

| *Oral Accusatory system of Criminal Justice – (Act No. 906 of 2004)* | | *Judicial Information System of the Attorney General's Office (Act No. 600 of 2000)* |
|---|---|---|
| Ibagué | 151 | 5 |
| Medellín | 1 090 | - |
| Montería | 72 | 9 |
| Pasto | 773 | 4 |
| Pereira | 165 | 3 |
| Quibdó | 73 | 1 |
| Santa Marta | 98 | 4 |
| Santa Rosa de Viterbo | 51 | 3 |
| Valledupar | 1 | 82 |
| Villavicencio | 1 772 | 8 |

*Source:* Attorney General's Office.

111. As has already been pointed out, enforced disappearance is an offence prosecutable without a prior motion or request. The Attorney General's Office is usually responsible for carrying out the corresponding legal proceedings, although, in certain cases, that task falls upon the Supreme Court of Justice and the Congress of the Republic. The military criminal courts are barred from hearing cases of enforced disappearance.[26]

112. The Counsel-General's Office and any other authority responsible for disciplinary action[27] may launch disciplinary investigations regarding public officials guilty of the offence of enforced disappearance, which constitutes misconduct of the utmost gravity,[28] leading to dismissal and a blanket ban on holding public office.

113. As to other bodies competent to provide support regarding investigations of cases of enforced disappearance, mention should be made of standing instruction No. 06 of 2006 of the Ministry of Defence, which is responsible for issuing specific orders in support of investigations of cases of enforced disappearance and for the urgent search mechanism, as well as for preventing enforced disappearances. The orders cover the Armed Forces and the National Police and read as follows:

(a) The Commanders of the Armed Forces and the National Police are ordered to give priority, at all levels, to requests from judicial authorities in connection with investigations. This applies in particular to the units of the judicial police in connection with the offence of enforced disappearance and procedures involving the urgent search mechanism, under the terms of article 7 (3) of Act No. 971 of 2005, which grants the judicial authorities the power to request support from the security forces and the various bodies of the judicial police in their efforts to find and obtain the release of missing persons. Under no circumstances may official bodies refuse such requests. Once a request has been received, the official body concerned shall take the necessary steps to ensure security in the area under its jurisdiction that is to be visited by the judicial authorities;

(b) When so ordered by the judicial authority (acting under article 7 (1) of the above-mentioned Act), the military and police authorities shall, without prior notification and of their own motion or on request, allow entry to and the search of detention facilities,

[26] Act No. 1407 of 2010, art. 3.
[27] Act No. 734 of 2002, art. 2.
[28] Act No. 734 of 2002, art. 48 (8).

headquarters, installations, offices or official premises, in order to determine whether a missing person or persons is/are present there;

(c) The Offices of the Inspectorates-General for the Armed Forces and for the National Police shall order that priority be assigned to summonses issued by the Disappeared Persons Investigative Commission and to the dissemination of the Commission's public policies on the prevention of enforced disappearances;

(d) The Joint Doctrine and Education Headquarters, the Office of the Inspectorate-General and the Directorate of Schools provide training and coordinate teaching and training on the classification and prevention of the offence of enforced disappearance, efforts to combat impunity, mechanisms for the protection of the rights affected by the offence and the content and development of the urgent search mechanism. Relevant advice is available from the Disappeared Persons Investigative Commission;

(e) The Office of the Inspectorate-General shall enforce and monitor compliance with Circular No. 7692 of 2005 and with this Directive.

114. The National Police have orders to ensure that the register of arrested and detained persons is permanently available to the public and to ensure that it is not altered. Moreover, the National Police have standing orders to compile any documents requested by the National Missing Persons Register to check its files for information on persons arrested and/or detained in cases where the authority acting under the urgent search mechanism needs information on the possible whereabouts of the person or persons presumed missing and to submit the information expeditiously.

115. As a part of its policy on human rights and international humanitarian law, the National Police has developed guidelines on the implementation of safeguards for ensuring prevention and protection, particularly regarding individual freedom and personal security and the right to integrity of the person and to life, as a part of efforts to protect all persons against enforced disappearance.[29]

116. In addition, in the light of the mandate given by the Constitution to the National Police and of their judicial police capacity to help the judicial branch investigate and punish offences of enforced disappearance, measures have been taken in the five geographical regions of the country. There are currently 29 police units and 120 judicial police officials working exclusively on criminal investigations under the supervision of the National Disappearances and Forced Displacement Investigation Unit of the Attorney General's Office, which carries out activities at the divisional level across the country.[30] Moreover, the interface between the Judicial and Investigative Police Directorate, the National Police Operational System database and the Disappeared Persons and Corpses Information System of the Forensic Medicine and Science Institute has benefited from logistical and

[29] Standing instruction No. 026 DIPON OGESI of 19 July 2005 "Compliance with the international instruments on enforced disappearance signed by Colombia".

Standing administrative instruction No. 007 DIPON INSGE of 11 February 2011 "Implementation of the National Plan for the Search for Disappeared Persons".

Standing administrative instruction No. 017 DIPON DIJIN of 16 May 2011 "Judicial police officials serving in the National Disappearances and Forced Displacement Investigation Unit of the Attorney General's Office", relating to the agreement of intent concluded on 15 June 2010 between the Presidential Agency for Social Action and International Cooperation, the Office of the President of the Republic, the Attorney General's Office and the National Police of Colombia.

[30] Bogotá, Bucaramanga, Cartagena, Cúcuta, Pereira, Medellín, Cali, Barranquilla and the Departments of Cundinamarca, Santander, Sucre, Norte de Santander, Tolima, Huila, Caqueta, Córdoba, Nariño, Cauca, Putumayo, Caldas, Quindío, Choco, Magdalena, Cesar, Guajira, Boyaca, Meta, Antioquia and Valle.

technological support. Between December 2013 (when the Disappeared Persons and Corpses Information System was set up) and 5 March 2014, 856 persons were located nationwide and 183 persons were registered in the Information Network System as "found alive".

117. Notwithstanding the above information on the special support provided to units of the Attorney General's Office at the national level, the criminal investigation divisions of the 13 metropolitan police districts and the 34 police departments have been ordered to carry out the instructions of the authority responsible for preventing, investigating and punishing offences of enforced disappearance.

118. As previously stated, the law ensures that authorities investigating enforced disappearances have unlimited access to detention facilities. It should be pointed out that any person with knowledge of a presumed enforced disappearance may as already mentioned, activate the urgent search mechanism through a high-level judicial authority (a judge or a prosecutor) in order to find the victim.

119. Under Act No. 971 of 2005, the authorities may, without prior notification, and of their own motion or on request, enter and search detention facilities, headquarters, installations, offices or official premises, in order to determine whether a missing person or persons is/are present there.[31] Likewise, the authorities may request support from the security forces and units of the judicial police when seeking to find and release missing persons.[32]

120. Furthermore, under the criminal investigation procedure, the authorities may inspect premises[33] and to carry out forced entry and search procedures.[34]

121. Act No. 971 of 2005 was adopted in order to prevent suspects from occupying posts that might enable them to influence investigations or threaten persons involved in the investigation of cases of enforced disappearance. The Act provides that the judicial authorities responsible for activating the urgent search mechanism may request that the relevant supervisor remove from office any public official believed (on the basis of reasonable grounds) to be responsible for an enforced disappearance, and any public official obstructing the urgent search mechanism process, or intimidating the family of the victim or the witnesses to the events in question.[35]

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[31] Article 7 (1) of Act No. 971 of 2005.

[32] Ibid., art. 7 (3).

[33] Act No. 600 of 2000, art. 244 et seq.; Act No. 906 of 2004, art. 213.

[34] Act No. 600 of 2000, art. 294 et seq.; Act No. 906 of 2004, art. 219 et seq.

[35] Regarding that possibility, as set out in article 7 of Act No. 971 of 2005, in ruling C-473/05, the Constitutional Court stated the following:

"With regard to the second power granted to the competent judicial authorities in article 7, such authorities shall have the power to 'Request that the supervisor of any public servant immediately remove him/her from his/her post on a temporary basis where there is reason to believe that he/she is responsible for the disappearance of a person. The same request can be made regarding public officials who are obstructing the urgent search mechanism process or intimidating the family of the alleged victim of an enforced disappearance or the witnesses to the events in question.' Firstly, it should be pointed out that, as the act in question clearly states, the aim of removing the public official from his/her post is to ensure that no public official can use his/her position to obstruct the urgent search process or to intimidate the family of the victim or witnesses to the events in question. The measure of removal from office referred to in article 7 (2) should not be confused with the concept of suspension provided for in the Unified Disciplinary Code (Act No. 734 of 2002, arts. 44 and 45), given that it does not involve any special prohibitions, a ban on working in the public sector or the holding back of wages (a measure often taken as a part of suspension). As previously stated, the removal of a public official from his/her post does not constitute a sanction because this measure is

122. Moreover, during the course of a criminal investigation, the relevant judicial authority may place suspects in pretrial detention as a precautionary measure and the corresponding disciplinary authority may temporarily suspend the public official implicated in the offence in question.[36]

## Article 13: Extradition for the crime of enforced disappearance

123. Colombia has no legislation that specifically establishes the crime of enforced disappearance as an extraditable offence under treaties with other States. However, as enforced disappearance is a crime under the Criminal Code and carries a minimum prison sentence of more than 4 years, it is covered by article 493 of Act No. 906 of 2004 (current Code of Criminal Procedure), which is general in nature. That article provides that extradition may be ordered as long as "the act giving rise to the request is also defined as a crime in Colombia and is punishable by a prison term of not less than 4 years".

124. Nor has Colombia concluded any treaties specifically providing for extradition for this offence. However, the majority of extradition treaties concluded by Colombia are based on an open list system of extraditable offences, under which extradition applies for all acts considered crimes in the contracting States that are punishable by a specific minimum prison term.

125. As noted in the section of this report concerning article 11, Colombia has not received any extradition requests for the crime of enforced disappearance and there are consequently no examples of any application of the Convention in relation to extradition.

126. Under Colombian domestic law, the Constitution and articles 509 and 491 of Acts No. 600 of 2000 and No. 906 of 2004, respectively, provide that the Government is responsible, through the Ministry of Justice, for offering or ordering the extradition of a person, subject to the prior approval of the Supreme Court of Justice.

127. In accordance with article 494, paragraph 2, of the Colombian Code of Criminal Procedure, extradition is granted provided that the extradited person "will not be subjected to enforced disappearance, torture or cruel, inhuman or degrading treatment or the punishments of deportation, life imprisonment or confiscation of property".

128. The table below lists international treaties with open clauses in relation to extraditable offences, under which enforced disappearance could, depending on the particular circumstances and the penalties provided for in domestic legal provisions, be considered an offence.

129. The table mentions, in particular, multilateral treaties Colombia has ratified with the following States: Argentina, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America.

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not taken as the result of the identification of prohibited conduct as a part of a disciplinary procedure. Rather, it is a precautionary measure, the aim of which is to ensure that the public official concerned does not hinder the search for the alleged victim of enforced disappearance. Consequently, the notion of removal from office does not constitute a breach of any constitutional precept.

(...) Requests for the removal of a public official from his/her post must be reasoned, with the relevant act stating that said measure may be imposed against public officials 'believed (on the basis of reasonable grounds) to be responsible for an enforced disappearance' or against public officials 'obstructing the urgent search mechanism process or intimidating the family of the victim or the witnesses to the events in question'. However, the fact that the request must be reasoned does not mean that absolute proof of the events that led to the request being made must be provided by the judicial official concerned."

[36] Act No. 734 of 2002, art. 157.

Table 3
**Open list of extradition treaties**

| *Instrument* | *Date of adoption* | *Enabling legislation* | *Date of entry into force for Colombia* |
|---|---|---|---|
| Montevideo Convention on Extradition** | Montevideo, 26 December 1933 | Act No. 74 of 1935 | 22 June 1936 |
| Agreement between the Government of the Republic of Colombia and the Government of the Republic of Peru amending the Bolivarian Extradition Treaty | Lima, 22 October 2004 | Act No. 1278 of 2009 | 16 June 2010 |
| Extradition Treaty with Brazil | Rio de Janeiro, 28 December 1938 | Act No. 85 of 1939 | 2 October 1940 |
| Extradition Treaty with Chile | Bogotá D.C., 16 November 1914 | Act No. 8 of 1928 | 4 August 1928 |
| Extradition Treaty with Cuba | Havana, 2 July 1932 | Act No. 16 of 1932 | 15 October 1936 |
| Protocol Amending the Convention on the Extradition of Offenders signed in Bogotá on 23 July 1892, Spain | Madrid, 16 March 1999 | Act No. 876 of 2004 | 16 September 2005 |
| Extradition Treaty with Panama | Panama, 24 December 1927 | Act No. 57 of 1928 | 24 November 1928 |

*Source:* International Law Office, Ministry of Foreign Affairs.

130. It should also be noted that, as a member of the inter-American human rights system, Colombia has ratified the American Convention on Human Rights, which entered into force on 5 December 2005, under which enforced disappearance is expressly established as a basis for extradition.

Table 4
**Extradition treaties for enforced disappearance**

| *Instrument* | *Date of adoption* | *Enabling legislation* | *Date of entry into force for Colombia* |
|---|---|---|---|
| Inter-American Convention on Forced Disappearance of Persons | 9 June 1994 | Act No. 707 of 2001 | 5 December 2005 |

*Source:* International Law Office, Ministry of Foreign Affairs.

131. In conclusion, it is important to note that enforced disappearance is not considered a political crime under Colombian domestic legislation.

## Article 14: Judicial cooperation in matters of enforced disappearance

132. The following table contains details of treaties on judicial cooperation between Colombia and the States parties to the Convention that are applicable to enforced disappearances:

Table 5
**Judicial cooperation treaties with other States parties to the Convention**

| *Instrument* | *Date of adoption* | *Enabling legislation* | *Date of entry into force for Colombia* |
|---|---|---|---|
| Agreement on judicial cooperation and mutual assistance in criminal matters between the Republic of Colombia and the Federative Republic of Brazil | 7 November 1997 | Act No. 512 of 1999 | 29 June 2001 |
| Memorandum of understanding on judicial cooperation between the Government of the Republic of Colombia and the Government of the Republic of Ecuador | 20 August 1991 | Simplified procedure agreement | 20 August 1991 |
| Convention on judicial cooperation and mutual assistance in criminal matters between the Republic of Colombia and the Republic of Ecuador | 18 December 1996 | Act No. 519 of 1999 | 26 July 2001 |
| Convention on judicial cooperation in criminal matters between the Republic of Colombia and the Kingdom of Spain | 29 May 1997 | Act No. 451 of 1998 | 1 December 2000 |
| Agreement on legal assistance and mutual judicial cooperation between the Government of the Republic of Colombia and the Government of the Republic of Panama | 19 November 1993 | Act No. 450 of 1998 | 9 October 1999 |
| Agreement on judicial cooperation in criminal matters between the Government of the Republic of Colombia and the Government of the Republic of Paraguay | 31 July 1997 | Act No. 452 of 1998 | 23 October 1999 |

| *Instrument* | *Date of adoption* | *Enabling legislation* | *Date of entry into force for Colombia* |
|---|---|---|---|
| Agreement on Judicial cooperation in criminal matters between the Government of the Republic of Colombia and the Government of the Eastern Republic of Uruguay | 17 February 1998 | Act No. 568 of 2000 | 1 February 2010 |
| Memorandum of understanding on judicial cooperation between the Government of the Republic of Colombia and the Government of the Republic of Costa Rica | 3 March 1992 | Simplified procedure agreement | 3 March 1992 |

*Source:* International Law Office, Ministry of Foreign Affairs.

133. The following cooperation treaties are between the Republic of Colombia and States not parties to the International Convention for the Protection of All Persons from Enforced Disappearance:

Table 6
**Judicial cooperation treaties with States non-parties to the Convention**

| *Instrument* | *Date of adoption* | *Enabling legislation* | *Date of entry into force for Colombia* |
|---|---|---|---|
| Agreement on mutual judicial cooperation between the Government of the Republic of Colombia and the Government of the Republic of El Salvador | 10 June 1994 | Act No. 840 of 2003 | 16 December 2008 |

*Source:* International Law Office, Ministry of Foreign Affairs.

## Article 15: Cooperation to assist victims of enforced disappearance

134. The Colombian State has neither signed nor amended any agreements to provide assistance to victims of enforced disappearance or facilitate the search for victims other than those mentioned in the section of this report concerning article 14.

## Article 16: Non-refoulement

135. With regard to extradition, as noted in respect of article 13, it is the responsibility of the national Government, through the Ministry of Justice, "to extradite a person sentenced or prosecuted abroad ..." (article 491 of Act No. 906 of 2004).

## Article 17: Prohibition of arbitrary detention

136. Secret or unofficial detention is prohibited in Colombia under article 28 of the Constitution, which regulates the regime of freedom in Colombia as follows:

> "Article 28. All persons are free. No one may be subjected to interference with his or her person or family, to arrest, detention or imprisonment or to having his or her home searched, except by virtue of a written order from a competent judicial authority, in due form and for reasons previously defined by law.
>
> A person in pretrial detention shall be brought before the competent judge within 36 hours so that the latter may make an appropriate decision within the time limit prescribed by law.
>
> In no circumstances shall anyone be arrested, detained or imprisoned for debts or sentenced to penalties or security measures that are not subject to statutory limitations."

137. In addition, the Criminal Code (Act No. 599 of 2000) criminalizes various acts related to secret or unofficial detention, such as abduction, arbitrary detention, deprivation of liberty and denial of habeas corpus, which can be considered a measure to prevent the commission of the acts described, including enforced disappearance.

> "Article 177. Denial of habeas corpus. Any judge who fails to rule on a petition for habeas corpus within the legal deadline or in any way hinders its consideration shall be liable to between 32 and 90 months' imprisonment and loss of employment or public office."

138. Colombia has also ratified various international instruments that protect the right to freedom of persons under its jurisdiction, including article 9 of the International Covenant on Civil and Political Rights of 1966, ratified by Act No. 74 of 1968; article 7 of the American Convention on Human Rights, ratified by Act No. 16 of 1972; and article 11 of the Inter-American Convention on Forced Disappearance of Persons of 1994.

139. However, the conditions under which detention orders may be issued, and the authorities that have competence to do so, are set out in the aforementioned article 28 of the Constitution and Acts No. 600 of 2000 and No. 906 of 2004, namely, detention is ordered for reasons previously defined by law and pursuant to a written order from the competent judicial authority.

140. This constitutional provision is reiterated in article 1 of Act No. 1709 of 2014, which states:

> "Article 1. Article 2 of Act No. 65 of 1993 shall be amended as follows:
>
> Article 2. Lawfulness. All persons are free. No one may be imprisoned, arrested or detained **without a written order from a competent judicial authority, in due form and for reasons previously defined by law**.
>
> No one shall be subjected to a punishment, security measure or sentence enforcement regime that is not provided for under the existing law. Pretrial detention of persons being investigated or prosecuted is an exception." (Emphasis added.)

141. With regard to the competent authorities, it is important to note that the arrest warrants issued under Act No. 600 of 2000 (semi-inquisitorial criminal system) are ordered by the Attorney General or his or her Deputy and the judicial official, as provided for in articles 345–353, and 355–364, whereas the arrest warrants ordered under Act No. 906 of 2004 (quasi-adversarial criminal system) are only granted by the due process judge in accordance with articles 297 to 305A and 306 to 320.

142. Provisions concerning the rights of arrested persons are contained in Acts No. 600 of 2000 and No. 906 of 2004, which states:

"Act No. 600 of 2000 – Article 349. Rights of arrested persons. All persons arrested shall immediately be notified, in writing, of the following:

1. The reasons for the arrest and the official who ordered it.

2. Their right immediately to consult a lawyer.

3. Their right to designate a person who should be notified of their arrest. The official responsible for the arrested individual shall immediately inform the person so designated of the arrest.

4. The right not to be held incommunicado."

"Act No. 906 of 2004 – Article 303. Rights of arrested persons. Persons who have been arrested shall be informed immediately of the following:

1. The offence of which they are being accused, the grounds for their arrest and the official who ordered it.

2. Their right to designate a person who should be notified of their arrest. The official responsible for the arrested individual shall immediately inform the person so designated.

3. Their right to remain silent, the fact that anything they say may be used against them and their right not to testify against their spouse, *common-law spouse* or relatives up to the fourth degree of consanguinity or civil relationship or up to second degree of affinity. (The italicized text was declared constitutional by the Constitutional Court in ruling C-029 of 2009, on the understanding that common-law spouses include, on an equal basis, members of same-sex partnerships).

4. Their right to appoint and to meet with a lawyer of their choice without delay. If they are unable to do so, the Public Defender Service shall appoint an attorney for them."

143. Article 27 of Agreement 0011 of 1995, implementing the General Regulations governing the internal regulations of penitentiaries and prisons, provides for the right of inmates to communicate with their lawyers and the conditions for such communication, as follows:

"Article 27. Communication with lawyers. Meetings between prisoners and their defence lawyers shall be held in places designated specifically for that purpose.

Lawyers who enter the prison shall comply with the rules concerning entry, identification, inspection and all other measures relating to the security of the inmates, the facility and themselves. They shall also comply with the visiting hours specified in the internal prison regulations.

Upon entry, lawyers shall present the following documentation:

1. National identity card.

2. Professional identity card, provisional or current valid licence or certification from the law clinic of the law faculty.

3. If it is a first visit, the petition describing the powers to be granted by the inmate; the inmate's authorization shall be requested before admission."

144. In addition to these provisions, communication of persons deprived of their liberty is dealt with in article 72 of Act No. 1709 of 2014, which states:

> "Article 72. Article 2 of Act No. 111 of 1993 shall be amended as follows:
>
> Article 111. Communication. Persons deprived of their liberty shall communicate regularly with their family and friends through correspondence, telecommunication services authorized by the correctional facility, and visits and interconnected or Internet communication networks, for collective use and previously authorized by the correctional facility, which serve as a means of communication for educational and pedagogical purposes. In any case, virtual rooms will be available for the conduct of such visits. All the information technology and telecommunications services described here must be authorized and monitored by the National Prisons Institute."

145. Likewise, article 73 of this Act regulates the regime of visits for persons deprived of their liberty as follows:

> "Article 73. Article 112 of Act No. 65 of 1993 shall be amended as follows:
>
> Article 112. Regime of visits. Persons deprived of their liberty may receive a visit every seven calendar days, without prejudice to the provisions of the applicable judicial and administrative benefits.
>
> For persons deprived of their liberty who are detained in prison facilities far from their families, the National Prisons Institute may apply a different schedule from that designated by the previous paragraph for visits.
>
> Visitors shall enter in accordance with the security requirements of the respective prison, subject to respect for their fundamental rights. Searches and any other security measures taken must be carried out with respect for human dignity and physical integrity."

146. In implementing these provisions, the Directorate of Care and Treatment of the National Prisons Institute has introduced a virtual visit communication strategy as part of its family care programme with the aim of helping to strengthen ties between inmates and their families, in accordance with the objectives of the plan of correctional treatment for convicts and foreign prisoners who do not receive visits; requirements and guidelines have been established so that the prison population can access this strategy.

147. With regard to foreign prisoners, the National Prisons Institute, with the support of the Department of Migration and Consular Affairs and Service to Citizens of the Ministry of Foreign Affairs, has developed the procedure for access by consular and diplomatic representatives to places of detention and published Circular No. 0004 of 11 February 2009 which determines whether foreign prisoners have the right to communicate with their diplomatic or consular offices. The circular is based on the provisions of article 36 of the Vienna Convention on Consular Relations of 1963, ratified by Colombia through Act No. 17 of 1971, which stipulates that embassies and international bodies may make humanitarian visits to citizens of their countries, as they have the right and the duty to verify the conditions in which these inmates are being held, and may deliver medical supplies, foodstuffs, clothing and sanitary supplies permitted in the establishment.

148. It should be noted that under the Constitution, the bodies established to carry out inspections in places of detention, are the Counsel-General's Office and the Ombudsman's Office, independent bodies that operate the Public Legal Service.

149. These bodies make regular visits to national prisons in order to monitor the conditions in which persons are detained and to ensure their rights are being respected; in other words, they check the general conditions of detention facilities, observance of human rights, care and treatment of inmates, special legal situations and the response to attempted escapes, as well as enforced disappearance and any cruel, inhuman or degrading treatment. Inspection visits are conducted sporadically and unannounced, as a prerequisite for effectiveness.

150. Furthermore, in accordance with domestic legislation, visits to places of detention by international bodies such as the International Committee of the Red Cross and Amnesty International must be authorized by the Government or covered by a relevant agreement. Visitors must also comply with the regulations and may not refuse security measures deemed necessary for their safety.

151. Furthermore, in order to determine the lawfulness of the deprivation of liberty, persons with a legitimate interest may file a petition of habeas corpus as provided for under article 30 of the Constitution:

> "Article 30. Anyone who believes that he or she has been unlawfully deprived of their liberty is entitled to apply at any time to any judicial authority for habeas corpus on his or her own or through a third party, and the judicial authority shall decide within 36 hours on the lawfulness of the detention."

152. This constitutional provision is regulated and implemented through Act No. 1095 of 2006. In turn, Act No. 971 of 2005 provides for a rapid remedy, which is not a substitute for criminal investigation, known as the urgent search mechanism, and stipulates:

> "Article 11. Procedure if the individual is being deprived of their liberty by public authorities. If the person in respect of whom the urgent search mechanism has been activated is found to be illegally deprived of his or her liberty by public authorities, he or she will be immediately released. If that is not appropriate, he or she will be handed over to the competent authority and an order will be made for his or her transfer to the nearest prison. Where appropriate, the official will initiate the habeas corpus process.
>
> Article 12. Guarantees of release. When the urgent search mechanism identifies the whereabouts of the individual and he or she is to be released by the authority or the official responsible for the arrest, the release shall take place in the presence of a family member, an official from the Public Legal Service or the victim's legal representative, or in a place that provides the released person full guarantees for the protection of life, freedom and personal integrity."

153. There are specific provisions in Colombian domestic legislation imposing the obligation to keep registers of persons deprived of their liberty. Article 12 of Act No. 589 of 2000 provides that persons deprived of their liberty may be detained only in facilities and institutions authorized for that purpose, as set forth in the Constitution and the law. State security agencies, the judicial police and prison institutions maintain official registers of arrested and detained persons that are organized and shared on a national network, with a note of the date and time of admission, the reason for the arrest or detention, action taken on their situation and the authority before which they have been brought or made available. This register shall be available on demand to anyone.

154. Furthermore, article 305 of Act No. 906 of 2004, promulgating the Code of Criminal Procedure, provides that "bodies with judicial police powers shall maintain an up-to-date register of every arrest made by them, including the following information: identification of the arrested individual, place, date and time of the arrest, reasons for the arrest, the official who made or formalized the arrest and the authority before whom the arrested individual was brought. Each body shall submit the specified register to the Attorney General's Office to enable the relevant unit to consolidate and update the register with information on arrests made by each body."

155. It should be noted that the Disappeared Persons Investigative Commission is examining a draft decree to establish a single register of arrested and detained persons; the draft was prepared by consensus by the Presidential Human Rights and International Humanitarian Law Programme and the Colombian Commission of Jurists and meets the standards contained in the Convention. The draft is also based on Act No. 589 of 2000 and Act No. 1418 of 2010, which require the establishment of the register.

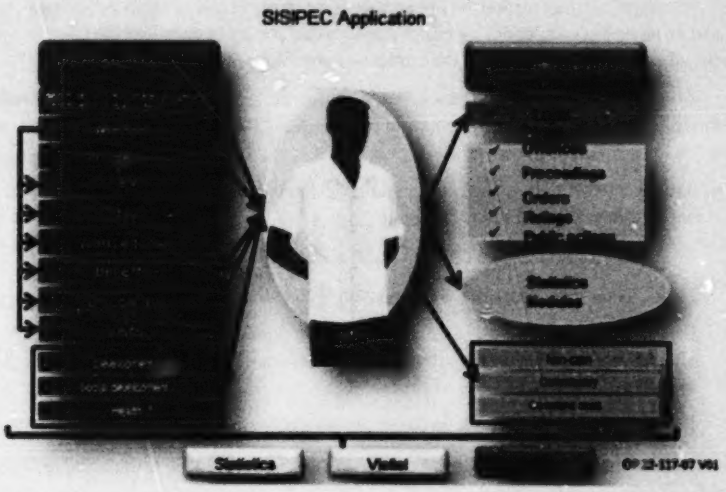
156. Act No. 1709 of 2014 recently updated the comprehensive information system for the prison system, which contains information on persons detained in prisons, and provides:

> "Article 43. Article 2 of Act No. 56 of 1993 shall be amended as follows:
>
> Article 56. Information systems. The information system for comprehensive systematization of the prison system (SISIPEC) shall be the main source of information for the prison and judicial authorities on the conditions of detention of all persons deprived of their liberty in the custody of the prison system. With respect to persons whose identity has not been established or who have no identity documents, the National Prisons Institute shall take the necessary steps with the National Civil Registry in order fully to identify them.
>
> SISIPEC shall contain updated figures and statistics from the daily logbook of each establishment on the situation of each person deprived of their liberty and their biographical information.
>
> SISIPEC shall be the key tool used by the prison authorities when declaring a prison emergency, in accordance with the corresponding grounds.
>
> Prison directors shall update SISIPEC daily; failure to do so constitutes an extremely serious disciplinary offence (...)."

157. The mission information system provides detailed information on inmates in the 138 national prisons registered with the National Prisons Institute, from admission to their release, with full identification including legal details, a physical description, biometric and other data concerning the inmate's treatment in prison and follow-up of their legal case; the information is recorded online, which makes new information accessible in real time and from any computer connected to the National Prison Institute's national network; old records are kept in case a person reoffends. The information system is made up of 23 modules, each with their own security level and user roles; there are currently more than 5.000 internal and external users.

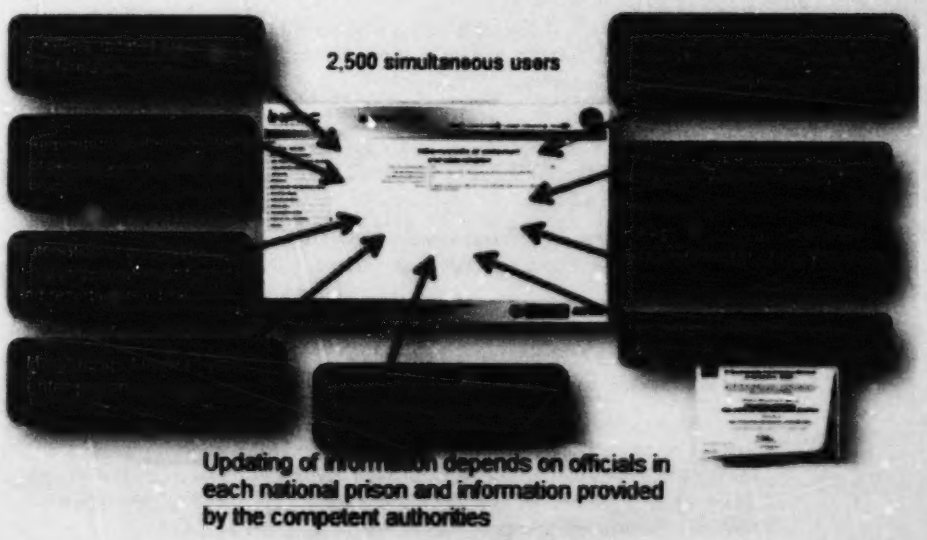
158. The components of the project are described in detail below:

Figure 1
**SISIPEC application**




*Source:* National Prisons Institute.

Figure 2
**SISIPEC application**


2,500 simultaneous users
Updating of information depends on officials in each national prison and information provided by the competent authorities

*Source:* National Prisons Institute.

## Article 18: Right of access to information

159. The right to information has been regulated from two perspectives: that of persons accused of having committed a wrongful act, as a due process guarantee, and that of victims, in order to safeguard their right in the context of criminal proceedings.

160. Any person who commits the crime of enforced disappearance is afforded rights in relation to arrest and access to information under article 349 of Act No. 600 of 2000, which reads:

> Article 349. Rights of arrested persons. All persons arrested shall immediately be notified in writing of the following:
>
> 1. The reason for the arrest and the official who ordered it.
>
> 2. Their right immediately to consult a lawyer.
>
> 3. Their right to designate a person who should be notified of their arrest. The official responsible for the arrested individual shall immediately inform the person so designated by him or her of the arrest.
>
> 4. The right not to be held incommunicado.

161. With regard to cases covered under Act No. 906 of 2004, article 303 of this Act stipulates the following:

> Article 303. Rights of arrested persons. Persons who have been arrested shall be informed immediately of the following:
>
> 1. The offence of which they are being accused, the grounds for their arrest, and the official who ordered it.
>
> 2. Their right to designate a person who should be notified of their arrest. The official responsible for the arrested individual shall immediately inform the person so designated of the arrest.
>
> 3. Their right to remain silent, the fact that anything they say may be used against them and their right not to testify against their spouse, common-law spouse or relatives up to the fourth degree of consanguinity or civil relationship or up to the second degree of affinity.
>
> 4. Their right to appoint and to meet with a lawyer of their choice without delay. If they are unable to do so, the Public Defender Service shall appoint an attorney for them.

162. The existing legal mechanisms that guarantee the protection of persons taking part in the investigation from any ill-treatment, intimidation or punishment are set forth in article 250 of the Constitution, which stipulates:

> The Attorney General's Office has the duty to initiate criminal action and to carry out an investigation into the constitutive elements of a serious offence that are brought to its attention by means of a report, special petition or criminal complaint or on which it proceeds of its own motion, provided there are sufficient grounds and factual circumstances to suggest the constitution of such an offence.

163. In exercising its functions, the Attorney General's Office also has the duty to:

> Ensure that victims, jurors, witnesses and other participants in criminal proceedings are protected. Both the conditions under which victims may intervene in criminal proceedings and the mechanisms of restorative justice shall be prescribed by law.

164. In accordance with this constitutional provision, article 11 of Act No. 906 of 2004 sets out the rules pertaining to the rights of victims, as follows:

> Article 11. The rights of victims. The State shall ensure that victims have access to the administration of justice under the terms set forth in this Code.
>
> In furtherance of the above, victims shall have the right:
>
> ...
>
> (b) To protection of their privacy, personal security and the security of their families and of witnesses for the prosecution;
>
> ...
>
> (g) To be informed of the final decision in the criminal prosecution; to apply, where relevant, to the due process judge; and to lodge appeals with the trial judge, where appropriate.

165. In this connection, Act No. 971 of 2005, which regulates the urgent search mechanism for the prevention of enforced disappearances in Colombia, stipulates the following:

> Article 15. Rights of petitioners, family members, human rights commissions, congressional hearings and hearings of the Disappeared Persons Investigative Commission. The petitioner and the relatives of the allegedly disappeared person shall have the right at all times to be informed of the procedural steps being carried out in connection with the search effort. Human rights commissions, congressional hearings and hearings of the Disappeared Persons Investigative Commission may also request reports on the status of the investigations.
>
> The judge may authorize the petitioner, the relatives of the alleged victim and a representative of the Disappeared Persons Investigative Commission to take part in the proceedings, provided that their presence does not hinder the case or efforts to find the disappeared person.
>
> Information on progress made through the urgent search mechanism shall not be withheld on the grounds of confidentiality from the applicant, the relatives of the allegedly disappeared person, human rights commissions, congressional hearings or hearings of the Disappeared Persons Investigative Commission.
>
> Article 16. The protection of witnesses and victims. Subject to a request submitted to the Attorney General's Office by the judicial official, the rules on the protection of victims and witnesses shall apply during the activation and implementation of the urgent search mechanism, in accordance with the provisions of the Code of Criminal Procedure, the Institutional Act on the Attorney General's Office and any other rules governing its application.

## Article 19: Collection of medical and genetic data

166. With regard to existing databases and to the procedures used for the collection, utilization, protection and storage of medical and genetic data, Act No. 1408 of 2010 makes provision for the establishment of the Disappeared Persons Genetic Profile Bank in Colombia and places it under the authority, coordination and management of the Attorney General's Office.

167. The purpose of the Bank is to manage and process genetic profile data from persons, corpses or remains of victims of disappearance and biological reference samples from their relatives. Guidelines have been drawn up for indexing, organizing, centralizing and storing

genetic profiles and for taking, storing and protecting biological samples from family members.

168. Regarding genetic data, Act No. 1408 of 2010 specifically stipulates that "the Attorney General's Office shall ensure that the other State agencies with forensic responsibilities are given limited and controlled access to the information contained in the Disappeared Persons Genetic Profile Bank to allow them to carry out any procedures they request to identify victims of enforced disappearance".[37]

169. In addition, article 5, paragraph 5 provides that:

> During all phases of the procedure, biological samples and the data obtained from them should be handled in accordance with the right to habeas data of the individuals who have provided them and within the guidelines established by international protocols and standards in relation to informed consent, confidentiality, security, the preservation, protection and exclusive use of samples for the purposes of identification and the destruction of the samples once the data obtained from them has been recorded.

170. With regard to cases of enforced disappearance and taking into account the existence of the National Register of Disappeared Persons,[38] intervening agencies[39] authorized to enter data into the system may request information for the purpose of maintaining the Registry.[40]

171. The Forensic Medicine and Science Institute is part of the Inter-Agency Subcommittee on Genetics, which now has four laboratories, in the cities of Bogotá, Medellín, Cali and Villavicencio and manages the national genetic database CODIS (named for its acronym in English). Improvements will be made to the Disappeared Persons Genetic Profile Bank in order to bring it into line with the objectives set forth in Act No. 1408 of 2010.

172. In addition, personal, morphological, medical, dental and other data relating to disappeared persons is available through the Missing Persons and Corpses Information System (SIRDEC), which is the main platform of the National Register of Disappeared Persons. SIRDEC relies on a number of security features and restricts access to users, which currently comprise the intervening agencies listed in Decree No. 4218 of 2005.[41]

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[37] Act No. 1408 of 2010, art. 4.

[38] Established under Act No. 589 of 2000, art. 9, and regulated under Decree No. 4218 of 2005.

[39] Decree No. 4218 of 2005, art. 7.

[40] In this connection, Decree No. 4218 of 2005, art. 5, reads: "Article 5. Content. In addition to the minimum data on disappeared persons and corpses described in Act No. 589 of 2000, article 9, the National Register of Disappeared Persons shall bring together the following information from sources within the national territory: (a) basic cross-referencing data on disappeared persons: last name, first name, identity document, sex, age, height, distinguishing features and other identifying data; (b) basic cross-referencing data from medical forensic autopsies carried out on corpses and skeletal remains; (c) basic cross-referencing data produced as a result of the activities of each institution in the performance of functions related to enforced disappearance; (d) any other data that may become necessary for the proper functioning of the Register. The Forensic Medicine and Science Institute shall be responsible for implementing and updating the methods and procedures used to maintain the National Register of Disappeared Persons in coordination with the Disappeared Persons Investigative Commission."

[41] Decree No. 4218 of 2005, art. 8. Obligations of intervening agencies. The agencies and organizations that make up the Disappeared Persons Investigative Commission, perform criminal investigative police functions, are authorized to register persons reported as missing or that have information related to the identification of individuals or the investigation of the crime of enforced disappearance shall promptly transmit such information to the Forensic Medicine and Science Institute on an

## Article 20: Restrictions and limitations on the right to information

173. The Code of Criminal Procedure (Act No. 600 of 2000) stipulates the following with regard to legal confidentiality:

> Article 330. Confidentiality of pretrial proceedings. During the pretrial phase of proceedings, no official may transmit copies of the record of proceedings unless requested to do so by an authority with competence to investigate and hear judicial, administrative or disciplinary cases, or to process a complaint.
>
> Persons who take part in proceedings have the right to receive a copy of the record for their own use and in exercise of their rights.
>
> Being a party to the proceedings carries with it the obligation to observe pretrial confidentiality, without the need for any special proceedings.
>
> The requirement of pretrial confidentiality shall not prevent the competent authorities from informing the media about the existence of criminal proceedings, the offence for which the defendant is being lawfully held in pretrial detention and investigated, the agency to which the defendant is attached, if appropriate, and his or her name, provided that an order has been issued to ensure the defendant's appearance at trial.

174. Article 23 of the Constitution of Colombia provides an effective remedy for obtaining information, in the right of petition:

> Article 23. All persons have the right to lawfully petition the authorities on general or specific grounds and to obtain the prompt resolution of their petition. The legislature shall have the power to regulate the exercise of this right before private organizations in order to guarantee fundamental rights.

175. The Constitution further provides for the remedy of *amparo*, as a mechanism for the protection of fundamental rights, as follows:

> Article 86. All persons shall have the right to petition for *amparo* before the courts at any time or place by means of a preferential and summary proceeding instituted by themselves or by someone acting on their behalf for the immediate protection of their fundamental constitutional rights whenever any of those rights is violated or threatened by an action or omission on the part of any public authority.
>
> This protection shall consist of an order enjoining the party from whom protection is sought to act or refrain from acting. The decision, which shall be immediately enforceable, may be challenged before the competent judge, who shall in all cases refer the matter to the Constitutional Court for its potential review.

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ongoing and permanent basis using the designated form. Paragraph 1. In addition to those mentioned in this article, the following shall be considered intervening agencies: the Civil Registry Office, the Prisons Institute, the Department of Statistics (DANE), the Administrative Security Department (DAS) and the Ministry of Social Protection. Paragraph 2. Intervening agencies shall ensure that any information that is recorded or transmitted is accurate and complete and shall adopt mechanisms to facilitate the transfer of information and its coordination with the National Register of Disappeared Persons.

## Article 21: Conditions for release

176. As indicated previously, article 28 of the Constitution stipulates that freedom is a human right whose limitation or infringement should be an exception. This constitutional rule is transposed into criminal procedure via Acts No. 600 of 2000 and No. 906 of 2004.

177. Act No. 600 of 2000, article 353, provides for the immediate release of a person who is unlawfully arrested or whose deprivation of liberty is unlawfully extended; article 358 sets out requirements for orders for release or detention; article 364 stipulates that measures to ensure the appearance of the defendant at trial that are ordered or revoked by the Attorney General's Office or his or her deputies must be reported to the relevant prosecution services; article 365 sets out the conditions for temporary release; article 366 provides that temporary release becomes effective when bail is granted and an undertaking to appear is signed; and article 368 sets out the obligations imposed by an undertaking to appear.

178. For its part, Act No. 906 of 2004 contains the following articles on the release of individuals: article 295, which expresses an affirmation of liberty, inasmuch as the deprivation or restriction of liberty of a defendant are applicable only in exceptional cases; and article 296, which enumerates the grounds for the restriction of liberty. Article 297 sets out the general requirements for a valid arrest, while article 305 establishes the requirement for maintaining a register of arrests and detentions, which must be kept up to date. Lastly, article 320 provides that whenever a judge grants, modifies or revokes an order to ensure the defendant's appearance at trial, he or she must notify the Attorney General's Office and the Administrative Security Department (DAS).

179. Article 30 of the Constitution stipulates that any person has the right to lodge a petition for a writ of habeas corpus before the judicial authorities, in the following circumstances:

> Any person who believes that he or she has been unlawfully deprived of their liberty is entitled to apply at any time to any judicial authority, for habeas corpus on his or her own or through a third party, and the judicial authority shall decide within 36 hours on the lawfulness of the detention.

180. This public right of action protects personal liberty when an individual is arrested in violation of constitutional or statutory guarantees or when his or her deprivation of liberty is extended unlawfully. It is the fundamental right of all persons who consider themselves to have been unlawfully deprived of liberty to apply to the judicial authority for protection of their right to personal liberty.

181. A petition for a writ of habeas corpus may be brought before any judicial official; however, habeas corpus proceedings are the exclusive competence of the judge in the location closest to the person who has been deprived of liberty. Any judge who fails to entertain or rule on a petition for a writ of habeas corpus within the legally prescribed time limit or who obstructs its examination shall be liable to arrest or deprivation of liberty and dismissal.

182. The granting of a writ of habeas corpus means that the person in question recovers his or her liberty and may not be targeted by new measures that restrict his or her liberty or are aimed at preventing the restoration of the guarantees infringed. Administrative and criminal investigations shall be instituted against persons found guilty of violating the right to personal liberty.

### Article 22: The right to seek remedies and to obtain information

183. As stated in article 30 of the Constitution, a writ of habeas corpus may be invoked by any person, without prejudice to the remedies available under criminal proceedings for the review of his or her deprivation of liberty.

184. In addition, an action for legal protection (*acción de tutela*) — known in other countries as an action for *amparo* (*acción de amparo*) — is the most effective mechanism for the protection of fundamental rights, in accordance with which:

> All persons shall have the right to petition for *amparo* before the courts at any time or place by means of a preferential and summary proceeding instituted by themselves or by someone acting on their behalf for the immediate protection of their fundamental constitutional rights whenever any of these rights is violated or threatened by an action or omission of any public authority.
>
> This protection shall consist of an order enjoining the party from whom protection is sought to act or refrain from acting. The decision, which shall be immediately enforceable, may be challenged before the competent judge, who shall in all cases refer the matter to the Constitutional Court for its potential review.
>
> Recourse to this remedy shall be warranted only when the party concerned has no other means of legal defence, except when it is used as a provisional mechanism for avoiding irreparable harm.
>
> The period of time between the petition for *amparo* and its resolution shall in no circumstances exceed 10 days.
>
> The law shall prescribe the cases in which a petition for *amparo* may be lodged against private individuals who are entrusted with providing a public service or whose actions have a direct and critical impact on the general welfare or with regard to whom the petitioner is in a position of subordination or defencelessness.[42]

185. The remedy of *amparo* was regulated by Decree No. 2591 of 1991, which, in turn, was regulated by Decree No. 306 of 1992. As a result, Colombian law allows a third person to petition for *amparo* on behalf of the person deprived of liberty. This can be his or her legal representative or the Office of the Ombudsman, in keeping with the powers conferred on the latter by the Constitution in relation to the guarantee of human rights. Otherwise, a relative of the person deprived of liberty may also lodge the petition.

186. Article 5 of Act No. 1437 of 2011, which sets out the Code of Administrative Procedure and Administrative Litigation, and Act No. 906 of 2004 establish the requirements and formalities according to which a person deprived of liberty may invoke the right to institute proceedings in order to request a prompt judicial ruling on the lawfulness of his or her detention.

187. Moreover, Act No. 599 of 2000, which is the Criminal Code, contains a section entitled "Arbitrary detention", which classifies as serious offences the unlawful deprivation of liberty,[43] the unlawful extension of deprivation of liberty,[44] special arbitrary detention[45] and failure to entertain a habeas corpus petition.[46] In the same way as the acts mentioned previously, the commission by a public servant of an act constituting a criminal offence with wilful intent, when committed by virtue of, for reasons of, as a consequence of, or in

[42] Constitution of Colombia, art. 86.
[43] Criminal Code, art 174.
[44] Ibid., art. 175.
[45] Ibid., art. 176.
[46] Ibid., art. 177.

abuse of one's office or position is a serious disciplinary offence.[47] Under article 48 of the Unified Disciplinary Code, the following are considered serious offences:

14. Unlawfully depriving a person of his or her liberty.

15. Unjustifiably delaying the transfer of an arrested, imprisoned or convicted person to a designated destination or failing to bring him or her before a competent authority within the time limit prescribed by law.

188. The penalties laid down in the Criminal Code are illustrated by the following criminal offences:

Article 174. Unlawful deprivation of liberty. Any public official who, in abuse of his or her authority, deprives another person of their liberty, shall incur a prison sentence of from three (3) to five (5) years.

Article 175. Unlawful prolongation of deprivation of liberty. Any public official who unlawfully prolongs the deprivation of liberty of a person shall incur prison sentence of from three (3) to five (5) years and shall be dismissed from their position and public office.

Article 176. Special arbitrary detention. Any public servant who, having failed to comply with statutory requirements, receives a person for the purpose of depriving him or her of liberty or of imposing a precautionary measure on him or her shall be liable to a term of imprisonment of from three (3) to five (5) years and loss of employment or public office.

Article 177. Denial of habeas corpus. Any judge who fails to rule on a petition for habeas corpus within the legal deadline or in any way hinders its consideration, shall be liable to a term of imprisonment of from two (2) to five (5) years and dismissal from employment or public office.

## Article 23: Performance of public officials and persons involved in the investigation and punishment of the crime of enforced disappearance

189. The provisions adopted by the State to ensure that those involved in the custody or treatment of persons deprived of liberty understand their obligation to report acts of enforced disappearance to their superiors or to other authorities are set forth in the constitution and legal, and all public servants are obliged to be aware of those provisions.

190. For that purpose the Constitution states in its article 6 that public servants are held to have violated the Constitution and laws in case of omission or of abuse of authority in the exercise of their functions. The Constitution also explicitly states that no one shall be subjected to enforced disappearance,[48] and that any natural or legal person may request that the competent authority apply criminal or disciplinary sanctions if the conduct of the public authorities warrants it.[49]

191. Article 26 of Act No. 600 of 2000 establishes the States' right to institute criminal proceedings, and article 27 states that all persons have a duty to report to the authorities any criminal acts of which they are aware and which they are required to investigate of their own motion. Similarly, public servants have a duty to report any criminal acts which they are required to investigate of their own motion, and to initiate such investigations if they are

[47] Act. No. 734 of 2002, art. 48, para. 1.
[48] Constitution of Colombia, art. 19.
[49] Ibid., art. 92.

within their competence. Otherwise they are obliged to bring the acts to the attention of the competent authority.

192. Furthermore, in its article 66 Act No. 906 of 2004 states that the State has a duty to initiate criminal proceedings, through the Office of the Attorney General, and to conduct investigations into any criminal acts, while article 67 states that all persons have a duty to report crimes of which they become aware.

193. Legislation expressly prohibiting orders or instructions that facilitate, authorize or encourage enforced disappearance, and guaranteeing that a person who refuses to obey such an order will not be punished, is contained in Act No. 599 of 2000 and in article 32 of the Criminal Code, which determines the absence of liability when "... 4. [a] person is fulfilling a legitimate order that has been issued by a competent authority in compliance with the law. Due obedience may not be invoked in cases of genocide, enforced disappearance and torture."

194. The Comprehensive Human Rights and International Humanitarian Law Policy implemented in the Ministry of Defence is set out in a framework document which contains guidelines and objectives and identifies the human rights and international humanitarian law programmes with which the armed forces and security forces must be familiar and implement in carrying out their work.

195. The Policy has three goals: to outline the system for providing training in human rights and international humanitarian law that the Ministry of Defence has been implementing for more than a decade; to align the teaching methods for those subjects with the current needs of the public security forces; and, finally, to combine all the resources of the public security forces to ensure that they fulfil their obligations in the fields of human rights and international humanitarian law. Here the concept of a comprehensive policy applies to its fullest: It is not just a matter of enhancing training but of reviewing and strengthening all the instruments that the public security forces have at their disposal to ensure that they fulfil their duties and obligations. It establishes a clear regulatory framework in which training and oversight are an integral part of all the activities of the public security forces.

196. Training is at the forefront of the comprehensive policy, which is designed to ensure trainees espouse the principles of human rights and international humanitarian law, by offering simple courses at the lower levels of training and education and promoting linkage between theory and practice.

197. One strategy adopted under this approach is the standard teaching model, the six-level training programme of the armed forces, which is graded according to operational requirements and levels of responsibility, using a methodology grounded in practice. It brings together the curricula and instructor training programmes of all the armed forces.

198. The training delivered at military training schools includes specific modules on various human rights topics, including enforced disappearance.

199. The safeguards that the national police has put in place to prevent enforced disappearance and protect all persons from it include training for administrators and technical experts and additional training activities included in an annual training plan; education strategies incorporating the topics of human rights and international humanitarian law, developed through a cross-cutting approach to the implementation of its curriculum and through special events focusing on international safeguards and legal mechanisms for preventing police officers from participating in enforced disappearances, and ensuring that cases are investigated and that the judicial system receives support in enforcing criminal penalties.

200. The following table provides data on the provision of training.

Table 7
**Training course for the national police**

| *Programme* | *Numbers of staff trained per year* | | | | | *Total by programme* |
|---|---|---|---|---|---|---|
| | *2010* | *2011* | *2012* | *2013* | *2014* | |
| Police administrative officials | 1 025 | 1 011 | 1 113 | 1 585 | 404 | **5 183** |
| Technical experts working for the police (non-commissioned and higher-ranking officers) | 11 594 | 11 243 | 10 568 | 3 429 | 3 884 | **40 718** |
| **Annual and cumulative totals** | **12 619** | **12 254** | **11 681** | **5 014** | **4 288** | **45 901** |

*Source*: National Police of Colombia.

Table 8
**National Police: Other training**

| *Event* | *Numbers of events and staff trained per year* | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | *2010* | | *2011* | | *2012* | | *2013* | |
| | *No. of events* | *No. of persons trained* | *No. of events* | *No. of persons trained* | *No. of events* | *No. of persons trained* | *No. of events* | *No. of persons trained* |
| Diploma course | 5 | 557 | 2 | 1 697 | 2 | 6 395 | 2 | 5 671 |
| Seminar | 4 | 1 664 | 2 | 548 | 2 | 83 | 0 | 0 |
| Course | 2 | 3 673 | 3 | 1 438 | 2 | 85 | 3 | 344 |
| Conference | 1 | 118 | 0 | 0 | 0 | 0 | 0 | 0 |
| Technical | 0 | 0 | 1 | 76 | 0 | 0 | 0 | 0 |
| Workshop | 0 | 0 | 0 | 0 | 2 | 222 | 0 | 0 |
| **Totals** | **12** | **6 012** | **8** | **3 759** | **8** | **6 785** | **5** | **6 015** |

*Source*: National Police of Colombia.

## Article 24: The rights of victims

201. Act No. 1408 of 2010 in its article 3 defines a victim as "[a] person who has been subjected to enforced disappearance as defined in article 165 of Act No. 599 of 2000. The term shall also apply to relatives of the direct victim, including the spouse or life partner, relative to the first-degree of consanguinity or civil status and any other relatives who have been directly harmed by the enforced disappearance."

202. The victims' right to know the truth must be ensured during criminal proceedings, which include determining the whereabouts of the missing person. For example, article 11 (e) of Act No. 906 of 2004 states that the victims' rights include the right "to know the truth about the circumstances surrounding the injustice they have suffered". In this respect the Constitutional Court has stated:

> "Case law has established that in order to ensure victims actually enjoy the right to an effective judicial remedy (Criminal Code, arts. 29 and 229) they must be able to intervene at any stage of the criminal proceedings, including the preliminary investigation. The purpose of their intervention is not only to ensure payment of

> reparations for the harm caused by the crime but also the exercise of their right to justice and truth. In some instances the representation of victims in criminal proceedings is solely intended to ensure effective enjoyment of their right to justice and to reparation. With this in mind, the Constitutional Court has established a doctrine that explicitly dispenses with a reductive view of victim's rights, based solely on financial compensation, to underscore the fact that victims, or those harmed by the crime, have a genuine right to due process, and to participate in the proceedings, not only to receive financial compensation but also, and especially, to exercise their rights to truth and justice."[50]

203. Regardless of events during the criminal proceedings, the State has made it mandatory to search for missing persons by virtue of Act No. 589 of 2000, article 11 of which "Without prejudice to the discontinuance or termination of the criminal proceedings for any reason, in cases involving the crime of enforced disappearance of persons, the State is under a continuing obligation to take all necessary steps to establish the victim's whereabouts, determine the reasons for their disappearance and inform their relatives of its findings."

204. Similarly, victims are entitled to be informed at all times about their rights and the results of the criminal investigation. The Constitutional Court has ruled:

> "A narrow view of the guarantee of communicating with the victim, which limits such communication to the victim's 'intervention' in the criminal proceedings, curtails the right of access to justice. An 'intervention' in the procedural sense is not required for the investigating authorities to shoulder the obligations imposed by the guarantee of communication, which has two facets: (i) information about the legal right of victims to protect their interests in the context of the criminal proceedings, and (ii) access to information about the circumstances of the crime, which is part of the right 'to know', and which involves access to documents and records throughout the proceedings. The interconnection and interdependence of the rights to truth, justice and reparations require that the guarantee of communication be realized from the moment that victims first contact investigative bodies. The rights to justice and reparation may be diminished if the victim is denied access to information from the start of the investigation so as to actively contribute by providing evidence and information relevant to the case.
>
> ...
>
> The right of access to justice (art. 229) requires the guarantee of communication with victims about their rights to be protected at each stage of the investigation, and requires the guarantee to be extended to the procedural prerogatives and powers derived from the right to truth and justice. When such rights are disregarded without objective and adequate reason, victims claims for financial compensation increase disproportionately, at the cost of their rights to truth and justice, which have been reaffirmed in the case law of this court. This divergence in the definition of victims' rights in turn generates an imbalance by restricting the scope of victims' rights in connection with the proceedings, in contrast to the rights of other actors, thus distorting the bilateral nature of the right to effective judicial protection. Such omissions imply the failure of legislations to fulfil their constitutional duty to reconcile the application of the right of participation and involvement of victims in criminal proceedings with the principles of access to the proceedings (art. 229) by all actors involved in the criminal dispute, and with the broad understanding of victims' rights derived from articles 1, 2 and 93 of the Charter, under the terms

[50] Constitutional Court, ruling C-454/06.

established in this ruling. By virtue of this finding, the Court shall declare article 135 of Act No. 906 of 2004 conditionally constitutional, on the understanding that the guarantee of notifying victims of their rights shall apply from the very moment victims come into contact with the authorities conducting the criminal investigation, and that the guarantee must refer to the rights to truth, justice and the reparations to which a victim is entitled."[51]

205. Victims also have the right to *ius postulandi*, meaning that they may be represented by counsel and be parties (Act No. 600 of 2000) or special participants (Act No. 906 of 2004) in criminal proceedings entitled to the powers granted to them by law. In the case of Act No. 975 of 2005 (the Justice and Peace Act), the Ombudsman's Office, through the national public defender system,[52] provides lawyers free of charge to represent victims of crimes (including crimes of enforced disappearance) that are prosecuted under the Act.

206. Moreover, to ensure that victims of the armed conflict have access to justice, the Ministry of Justice and Law has designed a strategy whereby a mobile unit provides care and guidance to victims of the armed conflict.

207. This strategy seeks to provide, in a friendly and dignified environment, information and psychological and legal counselling to victims in remote areas, offering help with, for example, filing depositions and appeals and psychological and legal counselling.

208. As of 4 July 2014, the unit had treated 24,943 people affected by the conflict and had covered 135 municipalities located in the most remote areas of 21 departments. The services offered by the unit included filing depositions for inclusion in the Central Registry of Victims, providing legal advice, filing appeals and providing psychological and legal counselling.

209. A total of 158 people, including 39 women and 119 men, had contacted the mobile unit in connection with cases of enforced disappearance.

210. The Interagency Information System for Transitional Justice, which compiles information from the Ministry of Justice and Law, the Attorney General's Office, the Ombudsman's Office and the Comprehensive Victim Support and Reparation Unit, has provided the following data on special criminal proceedings for justice and peace and the crime of enforced disappearance.

211. The data cover the period up to 1 June 2014:

Table 9

**Enforced disappearance under the Justice and Peace Process**

| *Information on enforced disappearance – Justice and Peace Process* | |
|---|---|
| Cases brought | 50 157 |
| Charges filed | 1 126 |
| Indictments | 628 |
| Convictions involving the crime of enforced disappearance | 14 |

*Source:* Interagency Information System for Transitional Justice.

[51] Constitutional Court, ruling C-454/06.

[52] Act No. 975 of 2005, art. 74.

212. Children and adolescents who are victims of enforced disappearance are represented in criminal proceedings by the Ombudsman's Office, through the national public defender system.[53]

213. In this context, in addition to the criminal investigations and the urgent search mechanism already described, the Disappeared Persons Investigative Commission has designed the National Plan to Find Missing Persons, which was then enshrined in legislation, in articles 3, 9 and 11 of Act No. 1408 of 2010, "whereby tribute is paid to the victims of the crime of enforced disappearance and measures are put in place to find and identify them". The Act provides for measures such as the Disappeared Persons Genetic Profile Bank, assistance to victim's families with the recovery of bodies or body parts of missing persons, the mapping of places where victims are buried, mechanisms for sharing information on locating victims of enforced disappearance, and protocols for the exhumation, reburial and conservation of bodies and other remains.

214. Other actions undertaken to locate and identify missing persons in Colombia have included pooling the resources of several national-level entities such as the National Civil Registry and the Forensic Medicine and Science Institute, in order to identify people who have died and been buried as unidentified individuals in Colombia in recent decades by using the fingerprints of unidentified persons registered in the National Civil Registry, the Automated Fingerprint Identification System and the National Register of Disappeared Persons (NRDP). This exercise resulted in the positive identification of 9,968 individuals, of whom 440 had been reported missing by their relatives before NRDP was set up.

215. It also became necessary to develop a new strategy for finding buried bodies and handing them over in an appropriate fashion after their identity had been confirmed by family members, so that they could later be buried in accordance with family rites.

216. In countries where there have been serious cases of enforced disappearances, actions taken have included the evaluation of cemeteries where these people are presumed to be buried, taking into consideration the date of the disappearance. In Colombia the events or circumstances in which people can disappear are numerous, and timing is not easy to determine; elements may overlap, or relevant circumstances (such as the activities of illegal groups) may continue into the present.

217. Given the foregoing, project known as Searching for Unidentified Persons in Cemeteries has been implemented to evaluate and map cemeteries, on the understanding that they are municipal property. The aim is to evaluate various features of the cemetery, such as its name, legal status, spaces and facilities, management, sanitation facilities, staffing, environmental, safety and biosecurity status, waste management, services offered, health and hygiene rating, and in particular the number of unidentified persons and identified but unclaimed persons buried there.

218. In the project's initial phase 180 cemeteries were evaluated and mapped. According to an update in 2015 the figure has risen to 335. Currently the project has 25 professional staff, of whom 16 are anthropologists in 15 departments, while the others — 8 administrative workers and a fingerprinting specialist — are based at the regional headquarters of the Forensic Medicine and Science Institute.

[53] Act No. 1098 of 2006, art. 196.

219. With regard to protocols for handing over the remains of missing persons to their families, article 7, paragraph 3, of Act No. 1408 of 2010 states: "The authorities responsible for identification, exhumation and investigation shall hand over the bodies or remains to the affected family under dignified conditions, in accordance with the relevant protocol developed by the National Commission on the Search for Missing Persons in consultation with victims ... ."

220. The draft of the protocol was presented by the Disappeared Persons Investigative Commission on 30 August 2013, after prior consultations with family members of victims in the cities of Pasto, Cúcuta and Cali, and more recently in Bucaramanga, Medellín, Barranquilla and Villavicencio. The protocol was officially launched on 28 August 2014 as part of the commemoration of the International Day of the Disappeared.[54]

221. In Colombia existing ante-mortem data on disappeared persons and their families have served as a basis for creating DNA databases making it possible to identify victims of enforced disappearances. For this purpose, article 9 of Act No. 589 of 2000 created the Disappeared Persons Register, managed by the National Institute of Forensic Science and Medicine, which is regulated by Decree No. 4218 of 2005 and began operations on 1 January 2007.

222. In addition to the above, there is a mechanism for the storage of genetic material of missing persons and their families that uses the Combined DNA Index System (CODIS), a database for management and entry of genetic profiles, which will be integrated into the Genetic Profile Bank for Disappeared Persons created under Act No. 1408 of 2010, under the direction, coordination and administration of the Attorney General's Office. Its purpose is to manage and process information on the genetic profiles of individuals, bodies or remains of victims of disappearance and biological reference samples taken from their relatives. It also develops criteria for the indexing, organization, centralization and storage of genetic profiles and the collection, storage and protection of biological samples from relatives. The implementing decree of the Act is nearing completion.

223. It should also be mentioned that victims are entitled to compensation and reparations through criminal proceedings,[55] which they may initiate directly. When the enforced disappearance was attributable to a public servant, or to an individual acting with the acquiescence, tolerance or collaboration of a public servant, or to an act or omission of the State in general, it is possible to bring a direct reparation action before the relevant administrative court.[56]

224. Act No. 1448 of 2011 — the Victims and Land Restitution Act — provides for various remedies[57] (including an administrative compensation procedure) for the victims covered by the terms of article 3 of the Act.

[54] Annex 1: Protocol for Handing over Remains.

[55] Act No. 600 of 2000; Act No. 906 of 2004; Act No. 975 of 2005.

[56] Act No. 1437 of 2011, art. 140.

[57] Article 69 of Act No. 1448 of 2011 states: "Article 69. Means of reparation. The victims covered by this law are entitled to remedies that foster restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in their individual, collective, material, moral and symbolic dimensions. Each of these measures will be implemented for victims keeping in mind the violation of their rights and the characteristics of the crime of which they were a victim."

225. Act No. 1448 of 2011 established in Colombia a comprehensive system for protecting, assisting, caring for and fully compensating victims of the country's armed conflict. Full reparation for victims involves not only monetary compensation or the restitution of property but also support from the State for inter alia education, health, housing, employment programmes and income generation, as well as actions to restore victims' dignity and their memory, recover the truth, and create conditions to ensure that events such as those they suffered are not repeated. The Act covers not only those who suffered forced displacement, dispossession or forced abandonment of land but also victims of murder, kidnapping, torture, **enforced disappearances**, recruitment of minors, land mines and crimes against sexual freedom.[58]

226. For the purposes of the Victims Act, in accordance with the provisions of article 3, those persons are recognized as victims "who, individually or collectively, *have been harmed by the events* that took place after on 1 January 1985, *as a result of violations of international humanitarian law* or serious and flagrant violations of *international human rights law*, during the internal armed conflict"; here, the victimizing aspect of enforced disappearance of persons is recognized as a clear violation of human rights and international humanitarian law in the context of Act No. 1448 of 2011.

227. In accordance with this legislative framework, victims include the spouse, the life partner, partners in same-sex couples, first-degree blood relatives, and first-degree civil-status relatives of the direct victim, if the latter has been killed or is missing. If none of these categories is represented, second-degree blood relatives in the ascending line will be considered the victims.

228. The Victims Act likewise provides for comprehensive reparation measures, specifically those mentioned in article 132 on regulations pertaining to administrative compensation, whose paragraph 4 states that the amount of compensation for victims of enforced disappearance shall amount to "40 times the statutory minimum wage in force in the year in which the event occurred, granted under article 15 of Act No. 418 of 1997 by the Presidential Agency for Social Action and International Cooperation for acts of victimization that cause death or enforced disappearance, or the equivalent of 40 times the legal minimum wage, granted for permanent disability as a result of violence".[59]

229. The Victims Unit has a Central Registry of Victims,[60] which flags the names of persons who are victims of enforced disappearance. Of the 6,541,351 registered victims, 135,863 persons, or 1.9 per cent of victims registered as of 1 June 2014, are victims of disappearance. Of these, 41,111 are direct victims and 94,752 indirect victims. The two groups now benefit from the Comprehensive Care, Assistance and Reparation for Victims Plan.

[58] Victims Unit, http://www.unidadvictimas.gov.co/index.php/en/conozca-sus-derechos/abc-de-la-ley. Viewed on 2 July 2014. Emphasis added.

[59] Act No. 1448 of 2011, art. 132, para. 4. This amount is equivalent to 24,640,000.

[60] This register is administered by the Victims Unit and includes data on persons registered as having been victims, in various ways, of a crime involving enforced disappearance. Several family members may be included for a single disappeared person.

**Persons registered in the Central Registry of Victims as victims of the crime of enforced disappearance**

Figure 3

**Persons registered in the Central Registry of Victims as victims of the crime of enforced disappearance**

**National total**

01 jun 2014

| Cause | Persons |
|---|---|
| Abandonement of or forced eviction from land | 7 139 |
| Terrorist act/assassinations/combat/harassment | 67 855 |
| Threats | 165 634 |
| Crimes against sexual freedom and integrity | 5 440 |
| Enforced disappearance | 135 863 |
| Displacement | 5 632 082 |
| Homicide | 849 710 |
| Land mines/unexploded ordnance/explosive device | 10 928 |
| Loss of movable or immovable property | 80 392 |
| Abduction | 36 232 |
| No information | 35 |
| Torture | 8 210 |
| Exploitation of children and adolescents | 7 361 |

Direct victims: 41 111

Indirect victims: 94 752

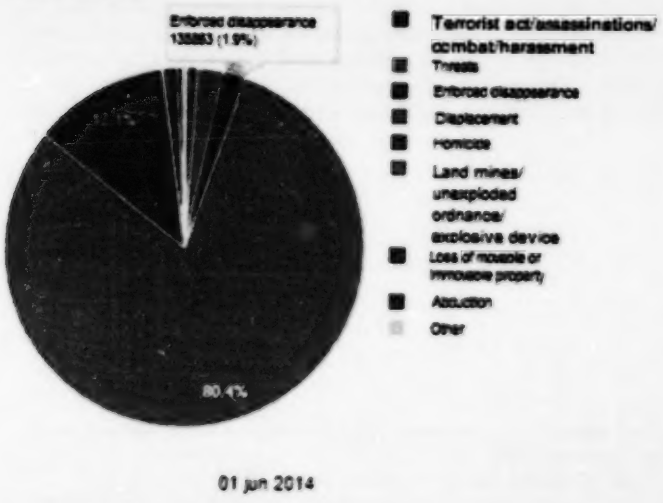
*Source:* National Information Network.

**Statistics by crime**

Figure 4

**Persons registered in the Central Registry of Victims, by crime**

**National total**




01 jun 2014

*Source:* National Information Network.

230. As already mentioned, the legislation covering victims provides for a number of measures to ensure full reparation for victims of enforced disappearance. Such reparation comprises a broad set of measures recognized as indispensable for the effective enjoyment of rights, which are implemented taking into account the actual needs of victims. They include financial compensation to the victim through administrative compensation; however, reparation seeks to cover the entirety of the material, emotional, social and cultural damage inflicted on victims, through the following measures:

- Rehabilitation;
- Guarantees of non-repetition;
- Administrative compensation;
- Measures of satisfaction;
- Restitution.

### 1. Rehabilitation measures

231. Rehabilitation as a remedy consists of a set of legal, medical, psychological and social strategies, plans and actions whose aim is to restore victims' physical and psychosocial state. Some examples are:

- Medical treatment of the after-effects of wounds from mines, bullets or other explosive devices as a result of the armed conflict;
- Psychological support to alleviate suffering over the loss of loved ones, which, in the case of enforced disappearance, is the tool for effectively restoring the victim's family's violated rights.

#### (a) Psychosocial counselling in the context of enforced disappearance

232. Psychosocial counselling, as noted above, is a proven rehabilitation measure whose aim is to alleviate suffering over the loss of loved ones, and in the case of enforced disappearance it is the means to enable the indirect victims of enforced disappearance effectively to recover. The psychosocial group of the Unit for Support and Full Reparation for Victims of Violence (UARIV) has developed a strategy of special support for the victims of such acts.

233. In accordance with article 163 of decree No. 4800 of 2011, UARIV is to establish guidelines for the psychosocial approach as a cross-cutting component that will include protocols addressing the need effectively to implement the psychosocial focus, with a view to full reparation, in all actions to provide support, assistance and full reparation actions and in plans and programmes implemented under Act No. 1448 of 2001. In that respect, psychosocial support ranks as one of the cross-cutting requirements in the entire support system, no less in victims' rights to assistance than in full reparation.[61] From this perspective, efforts have been made to construct complementary alternative measures for the purpose of mitigating the emotional impact that results from serious violations of human rights and international humanitarian law.

[61] Article 163 of decree No. 4800 states: "The Special Administrative Unit for Support and Full Reparation for Victims of Violence shall draw up guidelines for the psychosocial approach as a cross-cutting component that will include protocols addressing the need effectively to implement the psychosocial focus, with a view to full reparation, in all actions to provide support, assistance and full reparation, and in plans and programmes implemented under Act No. 1448 of 2001." As a consequence, these guidelines should be adopted by those bodies, including UARIV, that make up the National System for Comprehensive Victim Support and Reparation, in line with their areas of responsibility.

234. In order to provide psychosocial support for the relatives of victims, mechanisms that help support, promote and make public local truth and memory initiatives (individual as well as collective) have been implemented in response to the relatives' need for recognition of the disappearance and to ensure that such acts will not be repeated, with a view to creating a culture of rights and respect for life, and in consideration of the safety and protection of all victims of enforced disappearance, as well as of international human rights law. In this respect, during commemoration of the International Day of the Victims of Enforced Disappearances and other actions called for by victims, in 2013 and 2014, 42 symbolic acts took place bringing together some 3,300 persons and awareness of the actions authorized during the armed conflict:[62]

Table 10
**Psychosocial support measures**

| *Measure* | *Territorial administration* | *Municipality* | *Date* |
|---|---|---|---|
| Ponte la Camiseta del Desaparecido (Put on a T-shirt in support of a disappeared person) | Santander | Bucaramanga, Santander | 30 July 2013 |
| Historical memory and observance of the International Day of the Disappeared (Fundación Nydia Érika Bautista, Familiares Colombia and the Association of Relatives of Detainees and Missing Persons (ASFADDES)) | National | Bogotá, Zarzal (Valle), Medellín | 27 August 2013 |
| Observance of the International Day of the Victims of Enforced Disappearance | Atlántico | Barranquilla, Atlántico | 30 August 2013 |
| Observance of the International Day of the Victims of Enforced Disappearance | Antioquia | Medellín, Barbosa, Copacabana, Girardot, Bello, Envigado, Sabaneta, Caldas, La Estrella, Itagüí | 30 August 2013 |
| Day of memory and reflection on the search for disappeared persons in Colombia (Familiares Colombia) | National | Bogotá, Cundinamarca | 30 August 2013 (2 months) |
| Observance of the International Day of the Victims of Enforced Disappearances | Santander | Bucaramanga, Santander | 30 August 2013 |
| International Day of the Victims of Enforced Disappearances: "Por la Justicia y la verdad, pintar para no olvidar" (For justice and truth; painting to keep from forgetting) | Nariño | Pasto, Nariño | 30 August 2013 |

[62] 30 August, International Day of the Victims of Enforced Disappearances.

| *Measure* | *Territorial administration* | *Municipality* | *Date* |
|---|---|---|---|
| Commemorating the disappeared | Meta | Villavicencio, Leticia, Yopal, Inírida, San José del Guaviare, Granada, Mitú, Puerto Carreño | 30 August 2013 |
| International Day of the Victims of Enforced Disappearances | Central | Ibagué, Tolima | 30 August 2013 |
| Symbolic act: International Day of the Victims of Enforced Disappearances | Urabá | Apartadó | 30 August 2013 |
| International Day of the Victims of Enforced Disappearances. Photo exhibit: "Memorias de la Reparación" (Memories of reparation) | National | Bogotá, Cundinamarca | 30 August 2013 (1.5 months) |
| • Workshop in preparation for north-eastern meeting on enforced disappearance; | Santander | Bucaramanga – Santander | 9 and 10 May 2014 |
| • Workshop on memory and symbolic acts in memory of the victims of the enforced disappearances and homicides of 16 May 1998; | Medio Magdalena – National office | Barrancabermeja – Santander | 15 and 16 May 2014 |
| • Workshop on human rights and memory: Children and young people, ASFADDES. | Antioquia | Medellín | 17 and 18 May 2014 |

*Source:* Group to assess measures of satisfaction, reparations subdirectorate (UARIV).

235. Likewise, UARIV, in coordination with the exhumations group of the Office of the Special Prosecutor for Transitional Justice (formerly a support component of the National Unit for Justice and Peace), is providing psychosocial support to the families present during the return of remains; this measure was introduced to afford them satisfaction, as it helps to improve well-being and to alleviate families' pain, restore dignity to their suffering and dignify the memory of the direct victims. The support is provided and each step of the judicial proceedings, takes place on the basis of the standard procedure for the actual or symbolic return of remains of the Attorney General's Office and of the UARIV psychosocial guidelines, and addresses the families' needs and fulfils legal responsibilities.

236. In that context, from April 2012 to May 2014, UARIV, in coordination with the exhumations group of the Attorney General's Office, undertook the following actions:

- Coordination and development of the psychosocial support process during procedures for the return of remains;
- Development of guidelines towards full reparation, in the context of the judicial proceedings;
- Support when exhumations are required, either as part of collective reparations or other measures;

- "Do-no-harm" psychosocial training for officials throughout the search for disappeared persons, together with the International Committee of the Red Cross (ICRC);
- Technical assistance during the formulation of public policies on enforced disappearance;
- Support for the development of special protocols for victim care over the course of the assistance and full reparation proceedings.

237. For 2014, an international cooperation agreement with the International Organization for Migration was drawn up with the aim of combining technical, budgetary and logistical efforts in the procedures followed by the Attorney General's Office to return the bodies or remains of victims of enforced disappearance or homicide in the context of the internal armed conflict, supporting families as regards funeral expenses involving transport, lodging, food and psychosocial counselling. Consequently, since 24 January 2014, UARIV has guaranteed that families that have been made victims of enforced disappearance and homicide benefit from psychosocial counselling and help with the cost of transport, food and lodging associated with burials during the legal proceedings for the return of remains, as provided for in Acts No. 1408 of 2010 and No. 1448 of 2011.

### (b) Group Emotional Recovery Strategy

238. As part of the victim-support framework, the Group Emotional Recovery Strategy was introduced as a measure to afford satisfaction and alleviate victims' suffering. By organizing nine group meetings, it is intended to provide the survivors of such actions as enforced disappearance during the internal conflict with tools for emotional recovery. In this process, actions have been carefully designed on the basis of the principles of the psychosocial approach and are then carried out by the victims, who draw on their own autonomy and self-determination.

239. The Group Emotional Recovery Strategy provides a venue for reflection and fellow feeling. It is deployed through group meetings in which the victims share their feelings, beliefs and experiences, constructing a scenario whose goal is to make emotional well-being possible. In the group meetings, people who have experienced acts of violence can learn that they are not alone in their trauma; rather, there are, like them, many people who have managed to confront their suffering, rebuilding their lives and improving their relations with others by the day. Accordingly, the strategy seeks to provide the survivors of the armed conflict with tools through group meetings to assist their emotional recovery.

## 2. Guarantees of non-repetition

240. Guarantees of non-repetition are one of the measures taken by the State that seek to ensure the non-repetition of the violations of human rights and international human rights law that led to victimization. Accordingly, the State has launched a range of actions such as:

- Demobilizing and dismantling the illegal armed groups; applying penalties to persons responsible for violations of human rights and international humanitarian law;
- Preventing violations of human rights and international humanitarian law with special measures of protection for persons at greater risk, such as children, adolescents and older adults.

## 3. Compensatory measures

241. Act No. 1448 provides for swift, fair and adequate compensation as an economic remedy for all the victims of crimes committed in the context of the armed conflict,

including enforced disappearance. In this connection, administrative compensation does not fully cover the harm; it represents compensation from the State for victims of the internal conflict, which takes into account the nature and impact of the offence, the harm done and the victim's current state of vulnerability, taking into consideration the principles of differentiation, progressiveness and regularity.

242. For that reason, the compensation will be paid out in the amounts established by law. For children and adolescents who are entitled to compensation, a trust has been set up that will be turned over to the beneficiary when he or she reaches the age of 18. The victims of acts leading to death, enforced disappearance or permanent disability are awarded compensation through administrative channels, up to an amount 40 times the current minimum monthly wage, as established by Act No. 418 of 199.

243. Since 2009, both direct and indirect victims of enforced disappearance have been compensated. In 2009 itself, 3,387 payments were made to victims of the crime, and the numbers of payments have been gradually increasing, with a total of 4,092 in 2010, 11,198 in 2011, 21,557 in 2012, 13,413 in 2013 and 1,548 so far in 2014 (as of 1 June 2014). As the table below shows, a total of 55,195 victims were compensated in the period from 2009 to June 2014.

**Consolidated payments to victims of enforced disappearance to 1 June 2014**

Table 11
**Compensation for victims of enforced disappearance**

| *Year* | *Act* | *Number of payments* | *Amount paid* |
|---|---|---|---|
| 2009 | Enforced disappearance | 3 387 | Col$ 26 716 398 742.44 |
| 2010 | Enforced disappearance | 4 092 | Col$ 39 539 674 608.00 |
| 2011 | Enforced disappearance | 11 198 | Col$ 69 729 828 062.40 |
| 2012 | Enforced disappearance | 21 557 | Col$ 115 936 884 463.40 |
| 2013 | Enforced disappearance | 13 413 | Col$ 67 776 430 684.76 |
| 2014 | Enforced disappearance | 1 548 | Col$ 7 682 832 193.00 |
| **Total** | | **55 195** | **Col$ 327 382 048 754.00** |

*Source:* Compensation, Reparations Subdirectorate (UARIV).

### 4. Measures of satisfaction

244. Both tangible and intangible, measures of satisfaction are meant to restore dignity to the victims and disseminate the truth about what happened by reconstructing events and preserving historical memory. The main objective of these actions is to provide well-being and help alleviate victims' suffering. Examples of measures of satisfaction are:

- A letter of recognition of dignity sent by the director of UARIV in which the State regrets what happened and confirms the State's commitment to ensuring full reparation;
- The exemption from compulsory military service and the demobilization of victims from the internal armed conflict;
- Searches for disappeared persons;
- Acts of public forgiveness;

- Construction of historical memory, for example by declaring the National Day of Memory and Solidarity with Victims (9 April each year). Homages, celebrations and monuments in memory of the victims.

245. These measures are wholly relevant to acts of enforced disappearance.

246. In addition to the above measures, provisions have been adapted for the management of the assets of disappeared persons and the payment of salaries, benefits and access to financial and tax exemptions. In that respect, article 10 of Act No. 589 of 200 states:

> Administration of the assets of victims of the crime of enforced disappearance. The judicial authority examining or handling proceedings involving the crime of enforced disappearance may authorize the spouse, long-term companion or one of the parents or children of the disappeared person to assume temporary control and administration of all or part of the latter's assets, insofar as they were under his or her exclusive control. Whoever is so authorized shall act as executor, in accordance with the relevant civil statutes.
>
> The judicial official shall refer these proceedings to the responsible authority, which shall take such definitive decisions as it considers appropriate.
>
> Paragraph 1: The same judicial authority shall authorize the person acting as executor to continue receiving the salary or fees to which the disappeared person is entitled.
>
> Paragraph 2: Until his or her release, the victim of the crime of kidnapping shall receive the same treatment.

247. The relatives of the victims of enforced disappearance are also entitled to the benefits provided for by Act No. 986 of 2005, (which contains provisions for, inter alia, protection measures for victims of kidnapping and their families), in accordance with decision C-394/07 of the Constitutional Court. The Act establishes the grounds for exemption from civil liability and provides for the payment of wages and fees, social benefits and pensions to the disappeared person, as well as for protection mechanisms in the areas of health and education. Tax matters are also covered.

248. Also adopted was Act No. 1531 of 2012, in which the Declaration of absence by reason of enforced or other form of involuntary disappearance and its civil effects was **incorporated into the Colombian legal system. Referring to the Act, the Constitutional Court has stated:**

> The procedure, which should be free of charge, establishes short deadlines for the publication of the respective notices and rulings, with the possibility of replacing the judgement of presumed death with a declaration of absence by reason of enforced disappearance, ensuring that criminal proceedings are not subject to any statute of limitations and that the State is not prevented from continuing to investigate until the person appears or his or her remains are identified. In addition, the authority responsible for humanitarian aid shall not require of the families of the victims such formalities as a declaration of presumed death or the submission of a death certificate.[63]

249. A declaration of absence by reason of enforced or other form of involuntary disappearance is understood, in accordance with article 2 of Act No. 1531 of 2012, as the legal situation of persons whose whereabouts are unknown and who have not been found dead or alive. No set period of time shall have had to elapse between the most recent news

[63] Constitutional Court, ruling C-120/13.

of the missing person and the submission of the application for the declaration of absence by reason of enforced disappearance. The procedure is free of charge.

250. The applicants may be the spouse, long-term companion or same-sex partner and relatives to the third degree of consanguinity, the second degree of affinity or the first degree by force of law, or the Public Legal Service. The declaration is made by court decision.

251. The declaration of absence shall not lead to time limitations on criminal responsibility or prevent the continuation of investigations meant to establish the truth or the search for the victim until he or she is found, dead or alive, and has been fully identified.

252. The aims of this declaration are listed below, although the reappearance, alive, of the person declared absent by reason of enforced disappearance entails the annulment of the declaration:

(a) To ensure the continued recognition of the disappeared person as a person before the law;

(b) To ensure the disappeared person's continued parental authority over his or her minor children;

(c) To ensure protection of the disappeared person's estate, including assets acquired on credit and for which the repayment period has not elapsed;

(d) To ensure the protection of the rights of the family and the minor children to receive the person's wages when he or she is a public servant;

(e) The judge shall set as the date of the absence by reason of enforced or other involuntary forms of disappearance the date of the incident recorded in the report or complaint.

253. It should be noted that the Association of Relatives of Detainees and Missing Persons (ASFADDES) and a representative of the human rights organizations whom they themselves chose form part of the Disappeared Persons Investigative Commission and therefore take part in drafting regulations — a responsibility entrusted to the Commission by authority of the law — as in the case of the Inter-institutional Protocol on the Dignified Return of Disappeared Persons' Remains (art. 7, para. 3, of Act No. 1408 of 2010) and, as stated in article 15 of the Act, the regulations giving effect to Act No. 1408 of 2010.

## Article 25: Child and adolescent victims of enforced disappearance

254. Under Colombian legislation, the wrongful removal of children submitted to enforced disappearance, children whose parents are subjected to enforced disappearance and babies born during the captivity of pregnant mothers subjected to enforced disappearance falls under the crime of kidnapping.[64] The falsification,[65] concealment or destruction of documents[66] attesting the true identity of those children are also offences, without prejudice to the offences of illegal adoption[67] and suppression, alteration or supposition of civil status.[68]

255. Pursuant to the duties assigned to it by law, the Colombian Family Welfare Institute is responsible for formulating and monitoring the implementation of guidelines for

[64] Act No. 599 of 2000, arts. 168 et seq.
[65] Ibid., arts. 286 et seq.
[66] Ibid., art. 292.
[67] Ibid., art. 232.
[68] Ibid., art. 238.

restoring the rights of child and adolescent victims of armed conflict. It follows that the Institute's activities necessarily cover children and adolescents who have been directly or indirectly affected by enforced disappearance.

256. Regarding the fulfilment of the obligations stemming from the Declaration on the Protection of All Persons from Enforced Disappearance, the Institute's activities are part of the rights restoration process, which is carried out by family ombudsmen through administrative and legal measures to guarantee and restore the rights of child and adolescent victims whose parents were subjected to enforced disappearance. If necessary, such measures are taken in cooperation with the judicial authorities. The Institute also has the power to initiate legal proceedings before family courts, such as declarations of presumed death, the provision of guards, challenges to paternity and/or maternity, and filiation proceedings.

257. As mentioned above, existing mechanisms for the search and identification of disappeared children and procedures to return them to their families of origin, including DNA databases, are enshrined in Acts Nos. 598 of 2000, 971 of 2005, 1408 of 2010, 600 of 2000 and 906 of 2004.

258. The Colombian Constitution provides as follows:

> "Article 44. Children have the following fundamental rights: the right to life, physical integrity, health and social security, a balanced diet, name and nationality, the right to have a family and not be separated from it, the right to care and love, education and culture, leisure, and the right to express their opinion freely. They shall be protected against any form of neglect, physical or moral violence, abduction, sale, sexual abuse, exploitation at work, economic exploitation and hazardous work. They shall also be entitled to the other rights enshrined in the Constitution, in the laws and in the international treaties ratified by Colombia.
>
> The family, society and the State have an obligation to assist and protect children so as to ensure their harmonious and comprehensive development and the full exercise of their rights. Any person may require the competent authorities to comply with this obligation and to punish those who violate it.
>
> The rights of children take precedence over the rights of other persons."

259. Act No. 1098 of 2006, enacting the Code on Childhood and Adolescence in Colombia, specifies the rights of children and adolescents, including the right to be protected from enforced disappearance, as provided in article 20, paragraph 8. Articles 50 to 78 of the Act provide a general description of protective measures and guarantees of rights for children and adolescents. The Act establishes as a guiding principle:

> "Article 8. The best interests of the child. The best interests of the child is understood as the requirement that everyone must guarantee the full and simultaneous satisfaction of all the human rights of the child, which are universal, primary and interdependent."

260. Article 25 of the Act reads:

> "Article 25. Right to identity. Children and adolescents are entitled to an identity and to the preservation of its constitutive elements, including name, nationality and filiation, in accordance with the law. To this end, they must be entered in the civil register immediately after birth. They have the right to preserve their native language, culture and idiosyncrasies."

261. Lastly, it is important to specify that, until confirmed by the judicial authorities, the following information relates to suspected cases of enforced disappearance. The data,

which are disaggregated by age, sex and department, cover 2012, 2013 and 2014, the period under review.

**2012 statistics**

Table 12

**Number of disappeared persons, 2012**

National Report on Disappeared Persons, 2012. Department/Age group/Sex/Classification: Suspected cases of enforced disappearance (*Source:* RND/SIRDEC, 14 April 2014).

| *Department Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Amazonas | 2 | 1 | 3 |
| (25–29) | 1 | | 1 |
| (35–39) | | 1 | 1 |
| (40–44) | 1 | | 1 |
| Antioquia | 15 | 4 | 19 |
| (10–14) | | 2 | 2 |
| (15–17) | 2 | | 2 |
| (18–19) | 1 | | 1 |
| (20–24) | 3 | 1 | 4 |
| (25–29) | 3 | | 3 |
| (30–34) | 1 | 1 | 2 |
| (35–39) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (55–59) | 1 | | 1 |
| (65–69) | 1 | | 1 |
| Arauca | 4 | 1 | 5 |
| (15–17) | 2 | | 2 |
| (25–29) | | 1 | 1 |
| (30–34) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| Atlántico | 1 | 1 | 2 |
| (25–29) | 1 | | 1 |
| (40–44) | | 1 | 1 |
| Bogotá D.C. | 3 | 3 | 6 |
| (0–4) | 1 | | 1 |
| (20–24) | | 1 | 1 |
| (25–29) | 1 | | 1 |
| (30–34) | | 1 | 1 |
| (35–39) | 1 | | 1 |
| (5–9) | | 1 | 1 |
| Bolívar | 4 | 3 | 7 |
| (18–19) | | 1 | 1 |
| (25–29) | | 1 | 1 |

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (55–59) | 1 | 1 | 2 |
| (60–64) | 1 | | 1 |
| Boyacá | 1 | 1 | 2 |
| (30–34) | | 1 | 1 |
| (50–54) | 1 | | 1 |
| Caldas | 1 | | 1 |
| (40–44) | 1 | | 1 |
| Caquetá | 2 | | 2 |
| (45–49) | 1 | | 1 |
| (55–59) | 1 | | 1 |
| Casanare | 4 | 1 | 5 |
| (25–29) | 1 | 1 | 2 |
| (35–39) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| Cauca | 3 | 2 | 5 |
| (25–29) | 1 | | 1 |
| (30–34) | 2 | | 2 |
| (35–39) | | 2 | 2 |
| Cesar | 2 | 1 | 3 |
| (25–29) | | 1 | 1 |
| (35–39) | 1 | | 1 |
| (50–54) | 1 | | 1 |
| Chocó | 12 | | 12 |
| (10–14) | 1 | | 1 |
| (25–29) | 1 | | 1 |
| (30–34) | 4 | | 4 |
| (35–39) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (50–54) | 2 | | 2 |
| (55–59) | 1 | | 1 |
| (70–74) | 1 | | 1 |
| Córdoba | 1 | 2 | 3 |
| (15–17) | | 1 | 1 |
| (18–19) | 1 | | 1 |
| (25–29) | | 1 | 1 |
| Cundinamarca | 1 | 1 | 2 |
| (30–34) | | 1 | 1 |
| (45–49) | 1 | | 1 |

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Guainía | 1 | | 1 |
| (50–54) | 1 | | 1 |
| Guaviare | 2 | 1 | 3 |
| (15–17) | 1 | | 1 |
| (18–19) | | 1 | 1 |
| (30–34) | 1 | | 1 |
| Huila | 1 | 1 | 2 |
| (10–14) | | 1 | 1 |
| (15–17) | 1 | | 1 |
| La Guajira | 1 | | 1 |
| (25–29) | 1 | | 1 |
| Magdalena | 1 | | 1 |
| (55–59) | 1 | | 1 |
| Meta | 10 | 1 | 11 |
| (10–14) | 1 | | 1 |
| (15–17) | 1 | | 1 |
| (20–24) | 4 | | 4 |
| (25–29) | 4 | 1 | 5 |
| Nariño | 15 | 1 | 16 |
| (15–17) | 1 | | 1 |
| (20–24) | 5 | 1 | 6 |
| (25–29) | 2 | | 2 |
| (30–34) | 2 | | 2 |
| (35–39) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (50–54) | 1 | | 1 |
| (60–64) | 1 | | 1 |
| No information | | 1 | 1 |
| (25–29) | | 1 | 1 |
| Norte de Santander | 9 | | 9 |
| (15–17) | 1 | | 1 |
| (18–19) | 1 | | 1 |
| (20–24) | 3 | | 3 |
| (35–39) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (50–54) | 1 | | 1 |
| (60–64) | 1 | | 1 |
| Putumayo | 5 | 1 | 6 |
| (18–19) | 1 | 1 | 2 |
| (20–24) | 1 | | 1 |

| *Department Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| (25–29) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| Quindío | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Santander | 1 | 2 | 3 |
| (10–14) | | 1 | 1 |
| (15–17) | | 1 | 1 |
| (25–29) | 1 | | 1 |
| Sucre | | 1 | 1 |
| (10–14) | | 1 | 1 |
| Tolima | 1 | 2 | 3 |
| (15–17) | | 1 | 1 |
| (20–24) | | 1 | 1 |
| (40–44) | 1 | | 1 |
| Valle del Cauca | 37 | 7 | 44 |
| (0–4) | | 1 | 1 |
| (15–17) | 6 | | 6 |
| (18–19) | 5 | | 5 |
| (20–24) | 9 | 1 | 10 |
| (25–29) | 6 | 2 | 8 |
| (30–34) | 3 | | 3 |
| (35–39) | 3 | 2 | 5 |
| (40–44) | 3 | | 3 |
| (50–54) | 1 | | 1 |
| (Sin Inf.) | 1 | 1 | 2 |
| Vichada | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Colombian citizens disappeared abroad | 2 | 1 | 3 |
| (20–24) | | 1 | 1 |
| (40–44) | 2 | | 2 |
| **Total** | **144** | **40** | **184** |

*Source:* IMDLCF.

**2013 statistics**

Table 13

**Number of disappeared persons, 2013**

National Report on Disappeared Persons, 2013. Department/Age group/Sex/Classification. Suspected cases of enforced disappearance (*Source:* RND/SIRDEC, 14 April 2014).

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Amazonas | 1 | 1 | 2 |
| (35–39) | | 1 | 1 |
| (45–49) | 1 | | 1 |
| Antioquia | 11 | 1 | 12 |
| (10–14) | 2 | | 2 |
| (15–17) | 1 | | 1 |
| (18–19) | | 1 | 1 |
| (20–24) | 2 | | 2 |
| (25–29) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| (45–49) | 2 | | 2 |
| (55–59) | 1 | | 1 |
| (60–64) | 1 | | 1 |
| Arauca | 2 | | 2 |
| (15–17) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| Atlántico | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Bogotá D.C. | 8 | 10 | 18 |
| (10–14) | | 2 | 2 |
| (15–17) | 1 | 6 | 7 |
| (20–24) | 2 | | 2 |
| (25–29) | 1 | 1 | 2 |
| (30–34) | 2 | 1 | 3 |
| (40–44) | 1 | | 1 |
| (75–79) | 1 | | 1 |
| Bolívar | 5 | 1 | 6 |
| (10–14) | | 1 | 1 |
| (25–29) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (50–54) | 2 | | 2 |
| Boyacá | 1 | 1 | 2 |
| (18–19) | | 1 | 1 |
| (25–29) | 1 | | 1 |
| Caquetá | 1 | | 1 |

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| (15–17) | 1 | | 1 |
| Casanare | 2 | | 2 |
| (45–49) | 1 | | 1 |
| (55–59) | 1 | | 1 |
| Cauca | 5 | 1 | 6 |
| (10–14) | | 1 | 1 |
| (18–19) | 1 | | 1 |
| (20–24) | 2 | | 2 |
| (25–29) | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Cesar | 3 | 3 | 6 |
| (10–14) | | 2 | 2 |
| (15–17) | 1 | 1 | 2 |
| (20–24) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| Chocó | 2 | 1 | 3 |
| (18–19) | | 1 | 1 |
| (20–24) | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Córdoba | 2 | | 2 |
| (20–24) | 1 | | 1 |
| (35–39) | 1 | | 1 |
| Cundinamarca | | 2 | 2 |
| (0–4) | | 1 | 1 |
| (10–14) | | 1 | 1 |
| Guaviare | 3 | | 3 |
| (15–17) | 1 | | 1 |
| (40–44) | 1 | | 1 |
| (65–69) | 1 | | 1 |
| Huila | | 1 | 1 |
| (15–17) | | 1 | 1 |
| Magdalena | 1 | | 1 |
| (15–17) | 1 | | 1 |
| Meta | 8 | 1 | 9 |
| (15–17) | 2 | | 2 |
| (18–19) | 1 | | 1 |
| (20–24) | 2 | | 2 |
| (25–29) | 1 | | 1 |
| (30–34) | | 1 | 1 |
| (35–39) | 1 | | 1 |
| (50–54) | 1 | | 1 |

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Nariño | 16 | 3 | 19 |
| (15–17) | 1 | | 1 |
| (18–19) | 1 | | 1 |
| (20–24) | 2 | 2 | 4 |
| (30–34) | 2 | 1 | 3 |
| (35–39) | 2 | | 2 |
| (40–44) | 1 | | 1 |
| (50–54) | 3 | | 3 |
| (60–64) | 2 | | 2 |
| (80+) | 2 | | 2 |
| Norte de Santander | 6 | 1 | 7 |
| (20–24) | 3 | 1 | 4 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (50–54) | 1 | | 1 |
| Putumayo | 1 | | 1 |
| (18–19) | 1 | | 1 |
| Quindío | 2 | 1 | 3 |
| (10–14) | 1 | 1 | 2 |
| (15–17) | 1 | | 1 |
| Risaralda | 2 | | 2 |
| (20–24) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| Santander | 3 | 1 | 4 |
| (18–19) | | 1 | 1 |
| (20–24) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| Sucre | 1 | 1 | 2 |
| (10–14) | | 1 | 1 |
| (15–17) | 1 | | 1 |
| Tolima | 2 | 2 | 4 |
| (35–39) | 1 | 1 | 2 |
| (40–44) | 1 | | 1 |
| (5–9) | | 1 | 1 |
| Valle del Cauca | 43 | 4 | 47 |
| (15–17) | 3 | | 3 |
| (18–19) | 6 | 1 | 7 |
| (20–24) | 12 | 2 | 14 |
| (25–29) | 7 | | 7 |
| (30–34) | 3 | | 3 |

| *Department Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| (35–39) | 5 | | 5 |
| (40–44) | 3 | | 3 |
| (45–49) | 2 | 1 | 3 |
| (55–59) | 1 | | 1 |
| (60–64) | 1 | | 1 |
| Colombian citizens disappeared abroad | 1 | | 1 |
| (30–34) | 1 | | 1 |
| **Total** | **133** | **36** | **169** |

*Source:* IMDLCF.

**2014 statistics**

Table 14

**Number of disappeared persons, 2014**

National Report on Disappeared Persons, 2014. Department/Age group/Sex/Classification: Suspected cases of enforced disappearance (*Source:* RND/SIRDEC, 15 October 2014).

| *Department Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Antioquia | 10 | 8 | 18 |
| (15–17) | 2 | 6 | 8 |
| (18–19) | | 1 | 1 |
| (20–24) | 1 | | 1 |
| (25–29) | 3 | | 3 |
| (30–34) | 2 | | 2 |
| (40–44) | | 1 | 1 |
| (50–54) | 2 | | 2 |
| Arauca | 1 | 2 | 3 |
| (10–14) | | 1 | 1 |
| (20–24) | | 1 | 1 |
| (30–34) | 1 | | 1 |
| Atlántico | | 1 | 1 |
| (10–14) | | 1 | 1 |
| Bogotá D.C. | 3 | 3 | 6 |
| (10–14) | 1 | 1 | 2 |
| (18–19) | | 1 | 1 |
| (25–29) | 1 | | 1 |
| (30–34) | | 1 | 1 |
| (40–44) | 1 | | 1 |
| Bolívar | 6 | 3 | 9 |
| (15–17) | | 2 | 2 |
| (20–24) | 1 | | 1 |
| (25–29) | 1 | 1 | 2 |

| *Department/Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| (50–54) | 1 | | 1 |
| (70–74) | 1 | | 1 |
| Boyacá | 1 | | 1 |
| (18–19) | 1 | | 1 |
| Caldas | | 1 | 1 |
| (10–14) | | 1 | 1 |
| Casanare | | 1 | 1 |
| (15–17) | | 1 | 1 |
| Cauca | 2 | 1 | 3 |
| (20–24) | 1 | | 1 |
| (30–34) | 1 | 1 | 2 |
| Cesar | 3 | 1 | 4 |
| (20–24) | 1 | | 1 |
| (25–29) | | 1 | 1 |
| (35–39) | 2 | | 2 |
| Chocó | 1 | | 1 |
| (45–49) | 1 | | 1 |
| Córdoba | 1 | | 1 |
| (25–29) | 1 | | 1 |
| Cundinamarca | 5 | 2 | 7 |
| (15–17) | | 2 | 2 |
| (18–19) | 1 | | 1 |
| (20–24) | 1 | | 1 |
| (30–34) | 1 | | 1 |
| (55–59) | 1 | | 1 |
| (70–74) | 1 | | 1 |
| Guainía | | 1 | 1 |
| (30–34) | | 1 | 1 |
| Guaviare | 1 | | 1 |
| (55–59) | 1 | | 1 |
| Huila | 1 | 2 | 3 |
| (15–17) | | 1 | 1 |
| (45–49) | | 1 | 1 |
| (55–59) | 1 | | 1 |
| Magdalena | | 1 | 1 |
| (5–9) | | 1 | 1 |
| Meta | 2 | 1 | 3 |
| (20–24) | 1 | | 1 |
| (35–39) | 1 | 1 | 2 |

| *Department Age group* | *Men* | *Women* | *Total* |
|---|---|---|---|
| Nariño | 3 | | 3 |
| (20–24) | 1 | | 1 |
| (35–39) | 2 | | 2 |
| Norte de Santander | 3 | 2 | 5 |
| (15–17) | | 1 | 1 |
| (20–24) | 1 | | 1 |
| (25–29) | 2 | | 2 |
| (30–34) | | 1 | 1 |
| Putumayo | 1 | | 1 |
| (25–29) | 1 | | 1 |
| Santander | 1 | 3 | 4 |
| (10–14) | | 1 | 1 |
| (15–17) | | 1 | 1 |
| (35–39) | 1 | | 1 |
| (75–79) | | 1 | 1 |
| Colombian citizens disappeared abroad | 1 | | 1 |
| (30–34) | 1 | | 1 |
| Tolima | 1 | 2 | 3 |
| (20–24) | | 1 | 1 |
| (25–29) | | 1 | 1 |
| (55–59) | 1 | | 1 |
| Valle del Cauca | 30 | 2 | 32 |
| (15–17) | 5 | | 5 |
| (18–19) | 3 | | 3 |
| (20–24) | 7 | | 7 |
| (25–29) | 4 | | 4 |
| (30–34) | 5 | 2 | 7 |
| (35–39) | 2 | | 2 |
| (40–44) | 3 | | 3 |
| (45–49) | 1 | | 1 |
| Vichada | 4 | 1 | 5 |
| (10–14) | | 1 | 1 |
| (15–17) | 2 | | 2 |
| (40–44) | 1 | | 1 |
| (45–49) | 1 | | 1 |
| **Total** | **81** | **38** | **119** |

*Source:* IMDLCF.